16A C.J.S. Constitutional Law II VI Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
West's A.L.R. Digest, Constitutional Law 2660 to 2675, 2680, 2681, 2683, 2685 to 2692, 2695 to 2701, 2703, 2704, 2706 to 2708, 2710 to 2712, 2714 to 2716, 2718 to 2720, 2722 to 2726

End of Document

16A C.J.S. Constitutional Law II VI A Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
West's A.L.R. Digest, Constitutional Law 2660 to 2675, 2689, 2718, 2719, 2726

End of Document

16A C.J.S. Constitutional Law § 506

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

1. Impairment of Contracts

§ 506. Substance and effect of Contract Clause, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2660 to 2672, 2689, 2726

Legislation which impairs the obligation of contracts is forbidden by provisions of the federal and state constitutions.

The Federal Constitution[1] expressly prohibits the states from passing any law impairing the obligation of contracts.[2] State constitutions also contain provisions which, in different language, but with essentially the same effect.[3]

The Contract Clause is meant to protect certainty in business dealings and to encourage private agreements.[4] Thus, if the law as it existed at the time a contract was made had the effect to vest rights therein in any person, whether the immediate parties to the contract or others, such rights are inviolable.[5] However, the constitutional provisions prohibiting impairment of contractual obligations are restricted to the protection of vested rights and do not render inviolate mere contingent or speculative interests.[6] In any event, impairment of a contract is not prohibited if legal or equitable rights of a party are not in any way touched and the party is in no way injured,[7] and contracting parties cannot be heard to complain on constitutional grounds if, by the effect of government action, they get no more than they contracted for by agreement.[8] Accordingly, laws which restrict a party to those

gains reasonably to be expected from the contract are not subject to attack under the Contract Clause although they technically alter a contractual obligation.[9]

Public policy.

While the right to contract is one of the most basic rights possessed by a citizen, this right must yield to the public policy of the state as declared by its General Assembly.[10] The federal and state constitutions' impairment of Contract Clauses do not establish a right of parties to make contracts that are illegal and against public policy but merely prevent impairment by a changing of the laws after the contract has been made.[11] On the other hand, it has also been held that the polestar of any analysis of whether a statute unconstitutionally impairs an existing contract is the fundamental principle that essentially no degree of impairment will be tolerated, no matter how laudable the underlying public policy considerations may be.[12]

Repeal or amendment; retroactive laws.

The Contract Clause of the Federal Constitution does not prohibit states from repealing or amending statutes generally,[13] and such clause of neither the Federal Constitution[14] nor a state constitution[15] prohibits a state from enacting legislation with a retrospective effect. Indeed, a state may affect certain prior contracts by subsequent legislation if it has reserved the power to do so by appropriate constitutional or legislative enactments existing at the time the contracts were made.[16] Moreover, it has been held that the constitutional prohibition against laws impairing contractual obligations generally does not prohibit the retrospective application of laws that are remedial.[17] On the other hand, even a procedural or remedial statute may not be applied retrospectively if it impairs a vested right or contractual obligation in violation of a provision of the state constitution.[18]

CUMULATIVE SUPPLEMENT

Cases:

Constitution prohibits states from passing laws impairing the obligation of contracts. U.S.C.A. Const. Art. 1, § 10, cl. 1. Bank Markazi v. Peterson, 136 S. Ct. 1310 (2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S. Const. Art. I, § 10.

2 U.S.—Taylor v. City of Gadsden, 767 F.3d 1124 (11th Cir. 2014); Yankee Atomic Elec. Co. v. U.S., 112 F.3d 1569 (Fed. Cir. 1997); In re City of Stockton, Cal., 478 B.R. 8 (Bankr. E.D. Cal. 2012).
Ariz.—Robson Ranch Quail Creek, LLC v. Pima County, 215 Ariz. 545, 161 P.3d 588 (Ct. App. Div. 2 2007).
Cal.—California Redevelopment Association v. Matosantos, 212 Cal. App. 4th 1457, 152 Cal. Rptr. 3d 269 (3d Dist. 2013), review filed, (Mar. 6, 2013).
N.Y.—Welch Foods, Inc. v. Wilson, 277 A.D.2d 882, 716 N.Y.S.2d 243 (4th Dep't 2000).
Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).
District of Columbia
The District of Columbia is subject to the Contract Clause of the United States Constitution.
U.S.—Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Educ. of the District of Columbia, 109 F.3d 774, 117 Ed. Law Rep. 42 (D.C. Cir. 1997).

3 U.S.—Taylor v. City of Gadsden, 958 F. Supp. 2d 1287 (N.D. Ala. 2013), aff'd, 767 F.3d 1124 (11th Cir. 2014); Cycle Barn, Inc. v. Arctic Cat Sales Inc., 701 F. Supp. 2d 1197 (W.D. Wash. 2010).
Cal.—California Redevelopment Association v. Matosantos, 212 Cal. App. 4th 1457, 152 Cal. Rptr. 3d 269 (3d Dist. 2013), review filed, (Mar. 6, 2013).
N.H.—State Employees' Ass'n of New Hampshire v. State, 161 N.H. 730, 20 A.3d 961 (2011).

Applied coextensively

State and federal Contract Clauses are applied coextensively and provide the same protection.
U.S.—Cycle Barn, Inc. v. Arctic Cat Sales Inc., 701 F. Supp. 2d 1197 (W.D. Wash. 2010).
N.J.—Berg v. Christie, 436 N.J. Super. 220, 93 A.3d 387 (App. Div. 2014).

Validity

If a statute is valid under the Federal Contract Clause, then it is valid under the parallel state provision as well.
N.J.—Brown v. Township of Old Bridge, 319 N.J. Super. 476, 725 A.2d 1154 (App. Div. 1999).

4 U.S.—American Exp. Travel Related Services, Inc. v. Kentucky, 597 F. Supp. 2d 717 (E.D. Ky. 2009).

Promoting confidence

The purpose of the constitutional Contract Clause is to encourage trade and the lending of credit by promoting confidence in the stability of contractual obligations.
Wash.—Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).

5 U.S.—Hann v. City of Clinton, Okl., ex rel. Schuetter, 131 F.2d 978 (C.C.A. 10th Cir. 1942).
Fla.—Mahood v. Bessemer Properties, 154 Fla. 710, 18 So. 2d 775, 153 A.L.R. 1199 (1944).
Md.—Dryfoos v. Hostetter, 268 Md. 396, 302 A.2d 28 (1973).

6 Ga.—Webb v. Whitley, 114 Ga. App. 153, 150 S.E.2d 261 (1966).

Evaluation important

Evaluation of whether a right has vested is important for claims under the Contract Clause, which solely protects preexisting entitlements.
U.S.—Weaver v. Graham, 450 U.S. 24, 101 S. Ct. 960, 67 L. Ed. 2d 17 (1981).
A "vested right" is a common-law right that is based upon the constitutional right prohibiting Congress or a state from enacting laws which would impair a party's right to contract.
N.C.—Mission Hospitals, Inc. v. North Carolina Dept. of Health and Human Services, Div. of Health Service Regulation, 205 N.C. App. 35, 696 S.E.2d 163 (2010).

Right subject to protection

To be a vested property right and subject to protection under the Contract Clauses of the federal and state constitutions, a right must be more than a mere expectation based on an anticipation of the continuance of existing law and must have become a title, legal or equitable, to the present or future enforcement of a demand, or a legal exemption from the demand of another.
N.H.—Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Association, 159 N.H. 627, 992 A.2d 624 (2010).

7 La.—State ex rel. Porterie v. Walmsley, 183 La. 139, 162 So. 826 (1935).

8 N.Y.—Young v. City of Binghamton, 112 Misc. 2d 1017, 447 N.Y.S.2d 1017 (Sup 1982).

9 U.S.—City of El Paso v. Simmons, 379 U.S. 497, 85 S. Ct. 577, 13 L. Ed. 2d 446 (1965); United Healthcare Ins. Co. v. Davis, 602 F.3d 618 (5th Cir. 2010); HRPT Properties Trust v. Lingle, 715 F. Supp. 2d 1115 (D. Haw. 2010); TF-Harbor, LLC v. City of Rockwall, Tex., 18 F. Supp. 3d 810 (N.D. Tex. 2014).
La.—United Teachers of New Orleans v. State Bd. of Elementary and Secondary Educ., 985 So. 2d 184, 234 Ed. Law Rep. 1044 (La. Ct. App. 1st Cir. 2008).

Contract Clause and principle of continuing governmental power

The Contract Clause and the principle of continuing governmental power are construed in harmony; although not permitting a construction which permits contract repudiation or destruction, the impairment provision does not prevent laws which restrict a party to the gains reasonably to be expected from the contract.
Cal.—Teachers' Retirement Bd. v. Genest, 154 Cal. App. 4th 1012, 65 Cal. Rptr. 3d 326, 223 Ed. Law Rep. 342 (3d Dist. 2007).

10 Ky.—Beacon Ins. Co. of America v. State Farm Mut. Ins. Co., 795 S.W.2d 62 (Ky. 1990).

11 Utah—State v. Holt, 2010 UT App 138, 233 P.3d 828 (Utah Ct. App. 2010) (overruled on other grounds by, State v. Johnson, 2012 UT 68, 290 P.3d 21 (Utah 2012)).

12 Fla.—State Farm Mut. Auto. Ins. Co. v. Hassen, 650 So. 2d 128 (Fla. 2d DCA 1995), decision approved, 674 So. 2d 106 (Fla. 1996).

13 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Eagle SPE NV I, Inc. v. Kiley Ranch Communities, 5 F. Supp. 3d 1238 (D. Nev. 2014).
Mass.—Campbell v. Boston Housing Authority, 443 Mass. 574, 823 N.E.2d 363 (2005).
Pa.—Estate of Fridenberg v. Com., 613 Pa. 281, 33 A.3d 581 (2011).
Wash.—In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 (2014).

14 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Eagle SPE NV I, Inc. v. Kiley Ranch Communities, 5 F. Supp. 3d 1238 (D. Nev. 2014).
Pa.—Estate of Fridenberg v. Com., 613 Pa. 281, 33 A.3d 581 (2011).
Wash.—In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 (2014).

15 Fla.—Yellow Cab Co. of Dade County v. Dade County, 412 So. 2d 395 (Fla. 3d DCA 1982).
Wash.—In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 (2014).

16 Ky.—Morgan v. Natural Resources and Environmental Protection Cabinet, 6 S.W.3d 833 (Ky. Ct. App. 1999).

17 Colo.—Saxe v. Board of Trustees of Metropolitan State College of Denver, 179 P.3d 67, 230 Ed. Law Rep. 760 (Colo. App. 2007).
Tenn.—Estate of Bell v. Shelby County Health Care Corp., 318 S.W.3d 823 (Tenn. 2010).
Tex.—Liberty Mut. Ins. Co. v. Texas Dept. of Ins., 187 S.W.3d 808 (Tex. App. Austin 2006).

Definition

"Substantive law" is the part of law that creates, defines, and regulates the rights, duties, and powers of parties, as opposed to adjective, procedural, or remedial law, which is favored by the courts, and its retrospective application is not obnoxious to the spirit and policy of the law, and which is exemplified by laws that impair no contract or vested right, and do not disturb past transactions but preserve and enforce the right and heal defects in existing laws prescribing remedies.

Ala.—Alabama Ins. Guar. Ass'n v. Mercy Medical Ass'n, 120 So. 3d 1063 (Ala. 2013).

18 Tenn.—Estate of Bell v. Shelby County Health Care Corp., 318 S.W.3d 823 (Tenn. 2010).
Wis.—Rock Tenn Co. v. Labor and Industry Review Com'n, 2011 WI App 93, 334 Wis. 2d 750, 799 N.W.2d 904 (Ct. App. 2011).

End of Document

16A C.J.S. Constitutional Law § 507

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

1. Impairment of Contracts

§ 507. Construction of Contract Clause

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2660 to 2672, 2689

The laws in force at the time of execution of the contract are a part thereof, and, if possible, legislation will be construed as not impairing the obligation of contracts.

The meaning of constitutional provisions against impairment of the obligation of contracts remains the same now as when they were adopted,[1] and where provisions were embodied in state constitutions in conformity with the provision thereon in the Federal Constitution, they should receive a construction similar to the construction given the like provision of the Federal Constitution.[2] Thus, federal and state constitutional guarantees against impairment of contractual obligations are generally construed and applied in the same way to provide the same protection.[3] Such provisions should be construed in harmony with the reserved power of the state to safeguard the vital interests of her people.[4]

The term "contract," as used in such provisions, is given its ordinary meaning of a voluntary agreement of minds, on a sufficient consideration, to do or not to do certain things.[5] Likewise, the word "impair," as used in the Contract Clause of the United States

Constitution, requires no construction and may be given its ordinary meaning, which, according to the most basic dictionary definition, is "to make worse."[6]

If possible, legislation will be construed as not impairing the obligation of contracts,[7] and where the effect of giving a statute a retrospective construction would be to render it void as impairing the obligation of contracts, a prima facie presumption will be indulged in favor of its being prospective only.[8]

Law at time of making of contract.

Laws which subsist at the time and place of the making of a contract enter into and form part of it, for purposes of a claim alleging violation of the Contract Clause.[9] When a statute was in force and effect at the time a contract was made, there is no impairment in violation of the Contract Clause of the federal and state constitutions because existing statutes are read into future contracts and enter into the contract terms by implication.[10]

Footnotes

1 Neb.—First Trust Co. of Lincoln v. Smith, 134 Neb. 84, 277 N.W. 762 (1938).

2 Iowa—Des Moines Joint Stock Land Bank of Des Moines v. Nordholm, 217 Iowa 1319, 253 N.W. 701 (1934).

Application of federal framework and rules

State courts should apply the federal framework and rules when evaluating challenges under a state constitution's Contracts Clause because the state constitution is not more protective of contracts than the Federal Constitution.

Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).

3 N.J.—Brown v. Township of Old Bridge, 319 N.J. Super. 476, 725 A.2d 1154 (App. Div. 1999).

Tex.—Chandler v. Jorge A. Gutierrez, P.C., 906 S.W.2d 195 (Tex. App. Austin 1995), writ denied, (Mar. 21, 1996).

Same test

The Minnesota Contract Clause challenges are analyzed using the same test as challenges under the Contract Clause of the United States Constitution.

U.S.—MONY Life Ins. Co. v. Ericson, 533 F. Supp. 2d 921 (D. Minn. 2008).

Same analysis

Alaska—Hageland Aviation Services, Inc. v. Harms, 210 P.3d 444 (Alaska 2009).

Miss.—City of Starkville v. 4-County Elec. Power Ass'n, 909 So. 2d 1094 (Miss. 2005).

Same standard

U.S.—Equipment Mfrs. Institute v. Janklow, 300 F.3d 842 (8th Cir. 2002).

4 Cal.—Lyon v. Flournoy, 271 Cal. App. 2d 774, 76 Cal. Rptr. 869 (3d Dist. 1969).

Fla.—Hillsborough County v. Bregenzer, 151 Fla. 747, 10 So. 2d 498 (1942).

5 U.S.—Holland v. General Motors Corp., 75 F. Supp. 274 (W.D. N.Y. 1947), judgment aff'd, 169 F.2d 254 (C.C.A. 2d Cir. 1948).

Or.—Colby v. City of Medford, 85 Or. 485, 167 P. 487 (1917).

6 Neb.—Miller v. City of Omaha, 253 Neb. 798, 573 N.W.2d 121 (1998).

7 Miss.—Bank of Morton v. State Bond Commission, 199 So. 507 (Miss. 1941).

8 Ill.—Lynch v. Baltimore & O.S.W.R. Co., 240 Ill. 567, 88 N.E. 1034 (1909).

Tex.—Missouri, K. & T. Ry. Co. of Texas v. Hudgins, 60 Tex. Civ. App. 344, 127 S.W. 1183 (1910), writ refused.

9 U.S.—TF-Harbor, LLC v. City of Rockwall, Tex., 18 F. Supp. 3d 810 (N.D. Tex. 2014).

Kan.—State v. Chamberlain, 280 Kan. 241, 120 P.3d 319 (2005).

Purpose

The purpose of the rule incorporating applicable law into every contract is to comply with the federal constitutional prohibition against the enactment of laws impairing contractual obligations, not to impose by law a particular meaning to a term used in the agreement.

Ark.—Bull Motor Co. v. Murphy, 101 Ark. App. 33, 270 S.W.3d 350 (2007).

10 Minn.—Gretsch v. Vantium Capital, Inc., 846 N.W.2d 424 (Minn. 2014).

End of Document

16A C.J.S. Constitutional Law § 508

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

1. Impairment of Contracts

§ 508. Violation of prohibition imposed by Contract Clause; factors to be considered

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2660 to 2672, 2689

The threshold inquiry when analyzing a Contract Clause claim is whether the legislation has, in fact, resulted in a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear to withstand constitutional challenge.

Three factors are considered when evaluating a claim that the Contract Clause has been violated: (1) whether the law substantially impairs a contractual relationship; (2) whether there is a significant and legitimate public purpose for the law; and (3) whether the adjustment of rights and responsibilities of the contracting parties is based upon reasonable conditions and is of an appropriate nature.[1] Thus, the threshold inquiry when analyzing a Contract Clause claim is whether the legislation has, in fact, resulted in a substantial impairment of a contractual relationship.[2] The inquiry into whether a change in state law has resulted in the substantial impairment of a contractual relationship, as required to support a claimed violation of the Contract Clause, has three components: (1) whether there is a contractual relationship, (2) whether a change in law impairs that contractual relationship, and (3) whether the impairment is substantial.[3] If a legislative act has impaired a contract, the final step in the threshold inquiry for purposes of determining whether the act violates the Contract Clause is to decide whether the contractual impairment is substantial.[4] In making this determination, courts consider several factors, such as whether the

impairment eliminates an important contractual right,[5] affects terms upon which a party has relied,[6] thwarts performance of an essential right,[7] defeats an expectation of the parties,[8] significantly alter the duties of the parties,[9] alters a financial term,[10] or creates a significant financial hardship for one party.[11] The courts may also consider the absence of contractual language contemplating permanency or the presence of language affirmatively contemplating change.[12]

The severity of the impairment measures the height of the hurdle the state legislation must clear to withstand constitutional challenge;[13] the more severe the impairment, the more searching the examination of the legislation must be.[14] Minimal alteration of contractual obligations may end the inquiry at its first stage[15] while, on the other hand, severe impairment will push the inquiry to a careful examination of the nature and purpose of the legislation.[16]

If the threshold inquiry is met, the court must then determine whether the law has a legitimate and important public purpose,[17] such as the remedying of a broad and general social or economic problem.[18] If a significant and legitimate purpose is not identified, then the state law is unconstitutional under the Contract Clause.[19] If a significant and legitimate public purpose is present regarding a regulation that significantly impairs a contract, then the court must determine whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the adjustment.[20] Unless the state or its political subdivision is a contracting party, courts, when conducting a Contract Clause analysis, will defer to the judgment of the legislative body regarding the necessity and reasonableness of the impairment of contract.[21] If the contract allegedly impaired by a change in state law is one created, or entered into, by the State itself, the State's self-interest is at stake, and a court determining whether the change violates the Contract Clause is required to pay less deference to the legislative determination of reasonableness and necessity.[22]

Federal or state question.

Some courts hold that whether a contract exists for Contract Clause purposes is a federal question.[23] Others hold that for purposes of determining whether there is a contract subject to impairment under the Contract Clause of the federal and state constitutions, the existence of a contract generally is a question of state law.[24]

Past regulation of industry.

In determining the extent of the impairment for purposes of the Contract Clause, the court is to consider whether the industry which the complaining party has entered has been regulated in the past.[25] When a party enters an industry that is regulated in a particular manner, it is entering subject to further legislation in the area and changes in the regulation that may affect its contractual relationships are foreseeable for purposes of alleged Contract Clause violations.[26] For a Contract Clause claim, in determining whether state law has resulted in substantial impairment of a contractual relationship, the inquiry as to whether an impairment is substantial requires a district court to consider the parties' reasonable expectations with respect to the alleged contract; however, those expectations must be adjusted accordingly when the parties are operating in a heavily regulated industry,[27] such as insurance[28] gaming,[29] or hazardous waste disposal,[30] or when the parties can readily foresee future regulation involving the subject matter of their contract.[31]

CUMULATIVE SUPPLEMENT

Cases:

When applying three-prong analysis to determine whether a state law violates Contracts Clauses of state and federal constitutions, which prohibit laws impairing obligation of contracts, courts must first determine whether a contract exists, and if a contract exists, then must determine whether the modification complained of results in an impairment of that contract and, if so, whether this impairment can be characterized as substantial, and finally, if it is determined that the impairment is substantial, the court then must inquire whether the impairment, nonetheless, is reasonable and necessary to fulfill an important public purpose. U.S. Const. art. 1, § 10, cl. 1; R.I. Const. art. 1, § 12. Andrews v. Lombardi, 231 A.3d 1108 (R.I. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Heffner v. Murphy, 745 F.3d 56 (3d Cir. 2014), cert. denied, 135 S. Ct. 220, 190 L. Ed. 2d 133 (2014); Borman, LLC v. 18718 Borman, LLC, 777 F.3d 816 (6th Cir. 2015); American Federation of State, County and Municipal Employees v. City of Benton, Arkansas, 513 F.3d 874 (8th Cir. 2008); Katzman v. Los Angeles County Metropolitan Transportation Authority, 2014 WL 5698207 (N.D. Cal. 2014); Friedman v. City of Chicago Department of Business and Consumer Protection, 48 F. Supp. 3d 1046 (N.D. Ill. 2014).
Kan.—Zimmerman v. Board of County Com'rs, 289 Kan. 926, 218 P.3d 400 (2009), subsequent determination, 293 Kan. 332, 264 P.3d 989 (2011).
Mich.—Wells Fargo Bank, NA v. Cherryland Mall Ltd. Partnership (On Remand), 300 Mich. App. 361, 835 N.W.2d 593 (2013).
Neb.—Big John's Billiards, Inc. v. State, 288 Neb. 938, 852 N.W.2d 727 (2014).
N.J.—Farmers Mut. Fire Ins. Co. of Salem v. New Jersey Property-Liability Ins. Guar. Association, 215 N.J. 522, 74 A.3d 860 (2013).
N.Y.—Healthnow New York Inc. v. New York State Ins. Dept., 110 A.D.3d 1216, 973 N.Y.S.2d 387 (3d Dep't 2013).
Minn.—In re Individual 35W Bridge Litigation, 787 N.W.2d 643 (Minn. Ct. App. 2010), aff'd, 806 N.W.2d 820 (Minn. 2011).
Ohio—Utility Serv. Partners, Inc. v. Pub. Util. Comm., 124 Ohio St. 3d 284, 2009-Ohio-6764, 921 N.E.2d 1038 (2009).
Okla.—City of Tulsa v. State, 2012 OK 47, 278 P.3d 602 (Okla. 2012), as corrected, (May 29, 2012).
S.C.—Kirven v. Central States Health & Life Co., of Omaha, 409 S.C. 30, 760 S.E.2d 794 (2014).
Wis.—Metropolitan Milwaukee Ass'n of Commerce, Inc. v. City of Milwaukee, 2011 WI App 45, 332 Wis. 2d 459, 798 N.W.2d 287 (Ct. App. 2011).

2 U.S.—Maine Ass'n of Retirees v. Board of Trustees of Maine Public Employees Retirement System, 758 F.3d 23, 307 Ed. Law Rep. 617 (1st Cir. 2014); American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff, 669 F.3d 359 (3d Cir. 2012); Borman, LLC v. 18718 Borman, LLC, 777 F.3d 816 (6th Cir. 2015); Taylor v. City of Gadsden, 767 F.3d 1124 (11th Cir. 2014); Katzman v. Los Angeles County Metropolitan Transportation Authority, 2014 WL 5698207 (N.D. Cal. 2014); TF-Harbor, LLC v. City of Rockwall, Tex., 18 F. Supp. 3d 810 (N.D. Tex. 2014).
Alaska—Hageland Aviation Services, Inc. v. Harms, 210 P.3d 444 (Alaska 2009).
Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).
Me.—Windham Land Trust v. Jeffords, 2009 ME 29, 967 A.2d 690 (Me. 2009).
N.H.—Cloutier v. State, 163 N.H. 445, 42 A.3d 816 (2012).
N.J.—Berg v. Christie, 436 N.J. Super. 220, 93 A.3d 387 (App. Div. 2014).
Ohio—Doe v. Ronan, 127 Ohio St. 3d 188, 2010-Ohio-5072, 937 N.E.2d 556, 261 Ed. Law Rep. 1075 (2010).
Wis.—Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).
As to the impairment of an obligation with respect to contracts of individuals, generally, see § 592.
Total destruction not necessary

The total destruction of contractual expectations is not necessary for a finding of substantial impairment of a contractual relationship, for purposes of the Contract Clause.

U.S.—Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983); United Healthcare Ins. Co. v. Davis, 602 F.3d 618 (5th Cir. 2010); Katzman v. Los Angeles County Metropolitan Transportation Authority, 2014 WL 5698207 (N.D. Cal. 2014); Welch v. Brown, 935 F. Supp. 2d 875 (E.D. Mich. 2013), stay pending appeal denied, 2013 WL 3224416 (E.D. Mich. 2013) and order aff'd, 551 Fed. Appx. 804 (6th Cir. 2014); TF-Harbor, LLC v. City of Rockwall, Tex., 18 F. Supp. 3d 810 (N.D. Tex. 2014).

La.—United Teachers of New Orleans v. State Bd. of Elementary and Secondary Educ., 985 So. 2d 184, 234 Ed. Law Rep. 1044 (La. Ct. App. 1st Cir. 2008).

Minn.—In re Individual 35W Bridge Litigation, 787 N.W.2d 643 (Minn. Ct. App. 2010), aff'd, 806 N.W.2d 820 (Minn. 2011).

3 U.S.—Maine Ass'n of Retirees v. Board of Trustees of Maine Public Employees Retirement System, 758 F.3d 23, 307 Ed. Law Rep. 617 (1st Cir. 2014); Mabey Bridge & Shore, Inc. v. Schoch, 666 F.3d 862 (3d Cir. 2012); Sweeney v. Pence, 767 F.3d 654 (7th Cir. 2014); Taylor v. City of Gadsden, 767 F.3d 1124 (11th Cir. 2014); Sacramento County Retired Employees Ass'n v. County of Sacramento, 975 F. Supp. 2d 1150 (E.D. Cal. 2013); Cycle City, Ltd. v. Harley-Davidson Motor Co., Inc., 2014 WL 7714890 (D. Haw. 2014); Brown v. New York, 975 F. Supp. 2d 209 (N.D. N.Y. 2013); TF-Harbor, LLC v. City of Rockwall, Tex., 18 F. Supp. 3d 810 (N.D. Tex. 2014).

Alaska—Hageland Aviation Services, Inc. v. Harms, 210 P.3d 444 (Alaska 2009).

Colo.—Justus v. State, 2014 CO 75, 336 P.3d 202 (Colo. 2014).

Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).

N.H.—American Federation of Teachers v. State, 2015 WL 222181 (N.H. 2015).

N.J.—Berg v. Christie, 436 N.J. Super. 220, 93 A.3d 387 (App. Div. 2014).

S.C.—Harleysville Mut. Ins. Co. v. State, 401 S.C. 15, 736 S.E.2d 651 (2012).

Wis.—Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).

Contract

In order to violate the constitutional impairment of Contract Clause, the impaired relationship must be a contract in the usual sense of the word signifying an agreement of two or more minds, upon sufficient consideration, to do or not to do certain acts.

Wash.—In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 (2014).

Under the first step of the federal framework for determining whether a legislative act violates the Federal Constitution's Contract Clause, which also applies when evaluating challenges under the state constitution's contracts clause, in considering whether a contractual relationship exists, the test is not merely whether the parties have some contractual relationship but whether there was a contractual agreement regarding the specific terms allegedly at issue.

Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).

4 Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).

5 U.S.—HRPT Properties Trust v. Lingle, 715 F. Supp. 2d 1115 (D. Haw. 2010).

Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).

6 U.S.—Donohue v. Paterson, 715 F. Supp. 2d 306 (N.D. N.Y. 2010).

Wash.—In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 (2014).

7 U.S.—California Hosp. Ass'n v. Maxwell-Jolly, 776 F. Supp. 2d 1129 (E.D. Cal. 2011); Cycle City, Ltd. v. Harley-Davidson Motor Co., Inc., 2014 WL 7714890 (D. Haw. 2014).

8 U.S.—CFCU Community Credit Union v. Hayward, 552 F.3d 253 (2d Cir. 2009); American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff, 669 F.3d 359 (3d Cir. 2012); California Hosp. Ass'n v. Maxwell-Jolly, 776 F. Supp. 2d 1129 (E.D. Cal. 2011).

Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).

Reasonable expectations

A statute is viewed as "substantially impairing" a contract, for Contract Clause analysis, where it alters the reasonable expectations of the contracting parties.

S.C.—Anonymous Taxpayer v. South Carolina Dept. of Revenue, 377 S.C. 425, 661 S.E.2d 73 (2008).

An important consideration in the substantial impairment analysis under the Contract Clause is the extent to which the law upsets the reasonable expectations the parties had at the time of contracting, regarding the specific contractual rights the State's action allegedly impairs; laws which subsist at the time and place of the making of a contract enter into and form part of it, but a court also should consider the expectations of the parties with respect to changes in the law.

U.S.—United Healthcare Ins. Co. v. Davis, 602 F.3d 618 (5th Cir. 2010).

9 U.S.—Donohue v. Paterson, 715 F. Supp. 2d 306 (N.D. N.Y. 2010).

10 U.S.—California Hosp. Ass'n v. Maxwell-Jolly, 776 F. Supp. 2d 1129 (E.D. Cal. 2011); Cycle City, Ltd. v. Harley-Davidson Motor Co., Inc., 2014 WL 7714890 (D. Haw. 2014).

11 Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).

Money taken away

It is not enough simply that money has been taken away from a party through a statute; that take-away must cause an inability to otherwise meet obligations in order for there to be an impairment of contract.

Cal.—California Redevelopment Association v. Matosantos, 212 Cal. App. 4th 1457, 152 Cal. Rptr. 3d 269 (3d Dist. 2013), review filed, (Mar. 6, 2013).

12 Ariz.—Hawk v. PC Village Ass'n, Inc., 233 Ariz. 94, 309 P.3d 918 (Ct. App. Div. 1 2013).

13 U.S.—Andrews v. Anne Arundel County, Md., 931 F. Supp. 1255 (D. Md. 1996), aff'd, 114 F.3d 1175 (4th Cir. 1997); Universal Ins. Co. v. Department of Justice, 866 F. Supp. 2d 49 (D.P.R. 2012), on reconsideration in part, (June 22, 2012).

Scrutiny proportional to degree of impairment

For the purposes of a claim alleging violation of the Contract Clause, the scrutiny to which a court subjects the state law is proportional to the degree of impairment of contractual rights.

U.S.—TF-Harbor, LLC v. City of Rockwall, Tex., 18 F. Supp. 3d 810 (N.D. Tex. 2014).

In a constitutional Contract Clause challenge, the degree of contractual impairment determines the level of scrutiny to which the legislation in question will be subjected; the requirement that there exist a significant and legitimate public interest arises only where there exists a substantial impairment of a contractual obligation, but if the impairment is less than substantial, a diminished degree of scrutiny is required.

Wis.—Society Ins. v. Labor & Industry Review Com'n, 2010 WI 68, 326 Wis. 2d 444, 786 N.W.2d 385 (2010).

14 U.S.—Campanelli v. Allstate Life Ins. Co., 322 F.3d 1086 (9th Cir. 2003); Welch v. Brown, 935 F. Supp. 2d 875 (E.D. Mich. 2013), stay pending appeal denied, 2013 WL 3224416 (E.D. Mich. 2013) and order aff'd, 551 Fed. Appx. 804 (6th Cir. 2014).

Minn.—In re Individual 35W Bridge Litigation, 787 N.W.2d 643 (Minn. Ct. App. 2010), aff'd, 806 N.W.2d 820 (Minn. 2011).

15 U.S.—Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978); Katzman v. Los Angeles County Metropolitan Transportation Authority, 2014 WL 5698207 (N.D. Cal. 2014); Universal Ins. Co. v. Department of Justice, 866 F. Supp. 2d 49 (D.P.R. 2012), on reconsideration in part, (June 22, 2012).

La.—State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State, 937 So. 2d 313 (La. 2006).

N.C.—Bailey v. State, 348 N.C. 130, 500 S.E.2d 54 (1998).

Wis.—Dairyland Greyhound Park, Inc. v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408 (2006).

16 U.S.—Universal Ins. Co. v. Department of Justice, 866 F. Supp. 2d 49 (D.P.R. 2012), on reconsideration in part, (June 22, 2012).

Cal.—Board of Administration v. Wilson, 52 Cal. App. 4th 1109, 61 Cal. Rptr. 2d 207 (3d Dist. 1997).

La.—State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State, 937 So. 2d 313 (La. 2006).

17 U.S.—Maine Ass'n of Retirees v. Board of Trustees of Maine Public Employees Retirement System, 758 F.3d 23, 307 Ed. Law Rep. 617 (1st Cir. 2014); American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff, 669 F.3d 359 (3d Cir. 2012); American Federation of State, County and Municipal Employees v. City of Benton, Arkansas, 513 F.3d 874 (8th Cir. 2008); HRPT Properties Trust v. Lingle, 715 F. Supp. 2d 1115 (D. Haw. 2010); Tarek ibn Ziyad Academy v. Islamic Relief USA, 794 F. Supp. 2d 1044, 273 Ed. Law Rep. 702 (D. Minn. 2011).

Alaska—Hageland Aviation Services, Inc. v. Harms, 210 P.3d 444 (Alaska 2009).
Colo.—Justus v. State, 2014 CO 75, 336 P.3d 202 (Colo. 2014).
La.—United Teachers of New Orleans v. State Bd. of Elementary and Secondary Educ., 985 So. 2d 184, 234 Ed. Law Rep. 1044 (La. Ct. App. 1st Cir. 2008).
N.H.—American Federation of Teachers v. State, 2015 WL 222181 (N.H. 2015).
Ohio—Doe v. Ronan, 127 Ohio St. 3d 188, 2010-Ohio-5072, 937 N.E.2d 556, 261 Ed. Law Rep. 1075 (2010).

Critical inquiry

On a Contract Clause claim, ascertaining the severity of the impairment is a critical inquiry in determining whether a state action is a reasonable means of advancing a public purpose.
U.S.—United Auto., Aerospace, Agr. Implement Workers of America Intern. Union v. Fortuño, 633 F.3d 37 (1st Cir. 2011).

18 U.S.—Eric M. Berman, P.C. v. City of New York, 895 F. Supp. 2d 453 (E.D. N.Y. 2012); Rhode Island Hospitality Ass'n v. City of Providence ex rel. Lombardi, 775 F. Supp. 2d 416 (D.R.I. 2011), aff'd, 667 F.3d 17 (1st Cir. 2011).
Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).
Pa.—Association of Settlement Companies v. Department of Banking, 977 A.2d 1257 (Pa. Commw. Ct. 2009).

19 U.S.—American Federation of State, County and Municipal Employees v. City of Benton, Arkansas, 513 F.3d 874 (8th Cir. 2008).

20 U.S.—Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983); New Jersey Retail Merchants Ass'n v. Sidamon-Eristoff, 669 F.3d 374 (3d Cir. 2012); American Federation of State, County and Municipal Employees v. City of Benton, Arkansas, 513 F.3d 874 (8th Cir. 2008); Tarek ibn Ziyad Academy v. Islamic Relief USA, 794 F. Supp. 2d 1044, 273 Ed. Law Rep. 702 (D. Minn. 2011); Stangl v. Occidental Life Ins. Co. of North Carolina, 804 F. Supp. 2d 1224 (W.D. Okla. 2011); Rhode Island Hospitality Ass'n v. City of Providence ex rel. Lombardi, 775 F. Supp. 2d 416 (D.R.I. 2011), aff'd, 667 F.3d 17 (1st Cir. 2011).
La.—United Teachers of New Orleans v. State Bd. of Elementary and Secondary Educ., 985 So. 2d 184, 234 Ed. Law Rep. 1044 (La. Ct. App. 1st Cir. 2008).
Pa.—Association of Settlement Companies v. Department of Banking, 977 A.2d 1257 (Pa. Commw. Ct. 2009).
Ohio—Bass Energy Inc. v. Highland Hts., 193 Ohio App. 3d 725, 2010-Ohio-2102, 954 N.E.2d 130 (8th Dist. Cuyahoga County 2010).
Wis.—Society Ins. v. Labor & Industry Review Com'n, 2010 WI 68, 326 Wis. 2d 444, 786 N.W.2d 385 (2010).

21 U.S.—Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983); Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006); TF-Harbor, LLC v. City of Rockwall, Tex., 18 F. Supp. 3d 810 (N.D. Tex. 2014).
Ill—Consiglio v. Department of Financial and Professional Regulation, 2013 IL App (1st) 121142, 370 Ill. Dec. 664, 988 N.E.2d 1020 (App. Ct. 1st Dist. 2013), appeal allowed, 374 Ill. Dec. 563, 996 N.E.2d 10 (Ill. 2013) and appeal allowed, 374 Ill. Dec. 564, 996 N.E.2d 11 (Ill. 2013) and aff'd, 2014 IL 116023, 388 Ill. Dec. 878, 25 N.E.3d 570 (Ill. 2014).
La.—State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State, 937 So. 2d 313 (La. 2006).

Independent inquiry

Although deference is due to the legislature, and weight is given to the legislature's own statement of purposes for the law, a court must undertake its own independent inquiry to determine the reasonableness of the law and the importance of the purpose behind it when determining whether the law violates the Contract Clauses of the federal and state constitutions.
N.H.—Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Association, 159 N.H. 627, 992 A.2d 624 (2010).

22 U.S.—United Auto., Aerospace, Agr. Implement Workers of America Intern. Union v. Fortuño, 633 F.3d 37 (1st Cir. 2011); Roberts v. New York, 911 F. Supp. 2d 149 (N.D. N.Y. 2012).

23 U.S.—National Educ. Association-Rhode Island ex rel. Scigulinsky v. Retirement Bd. of Rhode Island Employees' Retirement System, 172 F.3d 22, 133 Ed. Law Rep. 738 (1st Cir. 1999); Hawkeye Commodity Promotions, Inc. v. Vilsack, 486 F.3d 430 (8th Cir. 2007).

Consideration of state or local law

Federal rather than state law controls as to whether state or local statutes or ordinances create contractual rights protected by the Contract Clause; nevertheless, federal courts do accord respectful consideration and great weight to the views of the state's highest court.

U.S.—San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement System, 568 F.3d 725 (9th Cir. 2009).

While the question of whether a contract was made is a matter of federal law for purposes of analyzing an alleged Contract Clause violation, a court may rely on general and local law when determining the answer.

U.S.—HRPT Properties Trust v. Lingle, 715 F. Supp. 2d 1115 (D. Haw. 2010).

24 U.S.—San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement System, 568 F.3d 725 (9th Cir. 2009).

S.C.—Alston v. City of Camden, 322 S.C. 38, 471 S.E.2d 174 (1996).

Existence and meaning of contract

Whether a law violates the Contract Clause of the Federal Constitution is a federal question, but determining the existence and meaning of a contract requires reference to state law.

Cal.—Walsh v. Board of Administration, 4 Cal. App. 4th 682, 6 Cal. Rptr. 2d 118 (3d Dist. 1992).

25 U.S.—American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff, 669 F.3d 359 (3d Cir. 2012); Hawkeye Commodity Promotions, Inc. v. Vilsack, 486 F.3d 430 (8th Cir. 2007); Rhode Island Hospitality Ass'n v. City of Providence ex rel. Lombardi, 775 F. Supp. 2d 416 (D.R.I. 2011), aff'd, 667 F.3d 17 (1st Cir. 2011); TF-Harbor, LLC v. City of Rockwall, Tex., 18 F. Supp. 3d 810 (N.D. Tex. 2014).

Colo.—Raptor Educ. Foundation, Inc. v. State, Dept. of Revenue, Div. of Motor Vehicles, 2012 COA 219, 296 P.3d 352 (Colo. App. 2012).

Conn.—Parnoff v. Yuille, 139 Conn. App. 147, 57 A.3d 349 (2012), certification denied, 307 Conn. 956, 59 A.3d 1192 (2013).

Required consideration

For the threshold issue in an analysis of the Federal Constitution's Contract Clause, i.e., whether the regulation has, in fact, operated as a substantial impairment of a contractual relationship, a court must consider whether the industry the complaining party has entered has been regulated in the past; this consideration is required because one whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them.

Kan.—Zimmerman v. Board of County Com'rs, 289 Kan. 926, 218 P.3d 400 (2009), subsequent determination, 293 Kan. 332, 264 P.3d 989 (2011).

26 U.S.—American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff, 669 F.3d 359 (3d Cir. 2012).

27 U.S.—Hawkeye Commodity Promotions, Inc. v. Vilsack, 486 F.3d 430 (8th Cir. 2007); Maine Educ. Ass'n Benefits Trust v. Cioppa, 842 F. Supp. 2d 373, 281 Ed. Law Rep. 1003 (D. Me. 2012); Universal Ins. Co. v. Department of Justice, 866 F. Supp. 2d 49 (D.P.R. 2012), on reconsideration in part, (June 22, 2012).

Analysis

Under the Contract Clause, the inquiry into the reasonable expectation of the parties at the time of contracting does not rely on the parties' subjective reliance; instead, the analysis focuses on whether the subject matter of the contract was objectively subject to regulation at the time of enactment and whether the terms of the contract suggest that the parties knew their contractual rights were subject to alteration by future state regulation.

U.S.—National Solid Wastes Management Ass'n v. City of Dallas, 903 F. Supp. 2d 446 (N.D. Tex. 2012).

28 U.S.—Maine Educ. Ass'n Benefits Trust v. Cioppa, 842 F. Supp. 2d 373, 281 Ed. Law Rep. 1003 (D. Me. 2012); Universal Ins. Co. v. Department of Justice, 866 F. Supp. 2d 49 (D.P.R. 2012), on reconsideration in part, (June 22, 2012).

La.—State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State, 937 So. 2d 313 (La. 2006).

Tex.—Liberty Mut. Ins. Co. v. Texas Dept. of Ins., 187 S.W.3d 808 (Tex. App. Austin 2006).

29 U.S.—Hawkeye Commodity Promotions, Inc. v. Miller, 432 F. Supp. 2d 822 (N.D. Iowa 2006), judgment aff'd, 486 F.3d 430 (8th Cir. 2007).

30 Ind.—Indiana Dept. of Environmental Management v. Chemical Waste Management, Inc., 643 N.E.2d 331 (Ind. 1994).

31 U.S.—Maine Educ. Ass'n Benefits Trust v. Cioppa, 842 F. Supp. 2d 373, 281 Ed. Law Rep. 1003 (D. Me. 2012); Universal Ins. Co. v. Department of Justice, 866 F. Supp. 2d 49 (D.P.R. 2012), on reconsideration in part, (June 22, 2012).

Diminished ability to prevail

Where an industry has been heavily regulated, and regulation of contracts is therefore foreseeable, a party's ability to prevail on its Contract Clause challenge is greatly diminished.

U.S.—Alliance of Auto. Mfrs., Inc. v. Currey, 984 F. Supp. 2d 32 (D. Conn. 2013), aff'd, 2015 WL 1529018 (2d Cir. 2015).

End of Document

16A C.J.S. Constitutional Law § 509

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

2. Law Impairing Obligation

§ 509. Laws within constitutional prohibition, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2663, 2666

Constitutional provisions against impairing the obligation of contracts apply only to state legislative action.

Constitutional prohibitions against impairment of the obligation of contracts are not directed against all impairments of contract obligations,[1] but only against those that result from subsequent exertion of the legislative power of the state,[2] and is directed only against legislative action taken by the State only.[3] The Contract Clause applies only to exercises of legislative power although it is not limited solely to formal enactments and statutes of a state legislature[4] and instead reaches every form in which the legislative power of a state is exerted,[5] including an order of some other instrumentality of the state exercising delegated legislative authority.[6] However, the Contract Clause's prohibition against the impairment of existing contract rights applies to state law, and not to an action of entity, even though the entity happens to be arm of state.[7]

Constitutions and constitutional amendments.

A state constitution,[8] or an amendment thereto,[9] is a "law," within the meaning of the Federal Constitution, prohibiting laws impairing the obligation of contracts.

Executive action.

The Contract Clause covers legislative as opposed to executive action.[10]

Corporate or individual action.

The Contract Clause prohibition the impairment of contract is not aimed at the doings of corporations or individuals.[11] An individual breach of contract does not reach constitutional dimensions and create a cause of action based on the Contract Clause of the Federal Constitution.[12]

Footnotes

1 U.S.—Arriaga v. Members of Bd. of Regents, 825 F. Supp. 1, 84 Ed. Law Rep. 695 (D. Mass. 1992).
Mass.—Massachusetts Community College Council v. Com., 420 Mass. 126, 649 N.E.2d 708 (1995).

2 U.S.—Mabey Bridge & Shore, Inc. v. Schoch, 666 F.3d 862 (3d Cir. 2012); Taylor v. City of Gadsden, 767 F.3d 1124 (11th Cir. 2014).

3 U.S.—Taylor v. City of Gadsden, 767 F.3d 1124 (11th Cir. 2014); Atuahene v. City of Hartford, 491 F. Supp. 2d 278 (D. Conn. 2007).

4 U.S.—Mabey Bridge & Shore, Inc. v. Schoch, 666 F.3d 862 (3d Cir. 2012).

5 U.S.—Mabey Bridge & Shore, Inc. v. Schoch, 666 F.3d 862 (3d Cir. 2012); City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014).
Initiative process
The constitutional prohibition against impairing contracts reaches any form of legislative action, including direct action by the people through the initiative process.
Wash.—Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006); Fedway Marketplace West, LLC v. State, 183 Wash. App. 860, 336 P.3d 615 (Div. 2 2014), review denied, 182 Wash. 2d 1013, 343 P.3d 759 (2015).

6 U.S.—City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014).

7 U.S.—In re Jet 1 Center, Inc., 322 B.R. 182 (Bankr. M.D. Fla. 2005).

8 U.S.—Price v. Pennsylvania Prop. & Cas. Ins. Co. Ass'n, 158 F. Supp. 2d 547 (E.D. Pa. 2001).
Cal.—Olson v. Cory, 134 Cal. App. 3d 85, 184 Cal. Rptr. 325 (2d Dist. 1982).

9 Mich.—Ziegler v. Witherspoon, 331 Mich. 337, 49 N.W.2d 318 (1951).
Wis.—Dairyland Greyhound Park, Inc. v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408 (2006).

10 U.S.—City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014); Underwood v. City of Chicago, Ill., 779 F.3d 461 (7th Cir. 2015).
Wis.—In re Liquidation of American Eagle Ins. Co., 2005 WI App 177, 286 Wis. 2d 689, 704 N.W.2d 44 (Ct. App. 2005).

11 U.S.—City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014).
Pa.—Pennsylvania Workers' Compensation Judges Professional Ass'n v. Executive Bd. of Com., 39 A.3d 486 (Pa. Commw. Ct. 2012), aff'd, 620 Pa. 217, 66 A.3d 765 (2013).

12 U.S.—TM Park Ave. Associates v. Pataki, 214 F.3d 344, 145 Ed. Law Rep. 147 (2d Cir. 2000).

16A C.J.S. Constitutional Law § 510

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

2. Law Impairing Obligation

§ 510. State statutes within constitutional prohibition

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2663, 2668

A state statute is a law within the meaning of constitutional provisions prohibiting laws impairing the obligation of contracts.

A state statute is a law within the meaning of constitutional provisions prohibiting laws impairing the obligation of contracts,[1] whether the impairment occurs by repeal or modification of the statute.[2]

Such constitutional provisions apply only to statutes enacted after the making of the contract alleged to have been impaired.[3] One whose rights, such as they are, are subject to state restriction cannot remove them from the power of the state by making a contract about them;[4] and a statute cannot be said to impair a contract that did not exist at the time of its enactment.[5] Furthermore, such constitutional provisions do not offer no protection where the legislature's exercise of its powers gives rise to no contractual relationship.[6]

Enacted by territorial legislature.

Although Congress may pass laws impairing the obligation of contracts,[7] and the Federal Constitution contains no express prohibition on the exercise of this power by the territories organized by Congress, it would be inconsistent with our whole scheme of government to accord to the territories greater power than the states, and it has accordingly been held that the territorial legislatures have no power to pass laws impairing the obligation of contracts.[8]

Footnotes

1 U.S.—Angostura Intern. Ltd. v. Melemed, 25 F. Supp. 2d 1008 (D. Minn. 1998).
Tenn.—Cincinnati, N. O. & T. P. Ry. Co. v. Rhea County, 194 Tenn. 167, 250 S.W.2d 60 (1952).

2 U.S.—State of Wash. v. Maricopa County, Ariz., 152 F.2d 556 (C.C.A. 9th Cir. 1945).
Ind.—Wencke v. City of Indianapolis, 429 N.E.2d 295 (Ind. Ct. App. 1981).

3 U.S.—Johnson Bonding Co., Inc. v. Com. of Ky., 420 F. Supp. 331 (E.D. Ky. 1976).
Ill.—In re Estate of Dierkes, 191 Ill. 2d 326, 246 Ill. Dec. 636, 730 N.E.2d 1101 (2000).
W. Va.—Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 204 W. Va. 279, 512 S.E.2d 201 (1998).
Statute part of contract terms by implication
A statute providing a private right of action for a mortgagee's violation of mortgage servicer licensing requirements did not violate the Contract Clause of either the federal or state constitution, where the statute was in force and effect when the contract was made, and therefore was part of the contract terms by implication.
Minn.—Gretsch v. Vantium Capital, Inc., 846 N.W.2d 424 (Minn. 2014).

4 U.S.—Campanelli v. Allstate Life Ins. Co., 322 F.3d 1086 (9th Cir. 2003); Global Network Communications, Inc. v. City of New York, 507 F. Supp. 2d 365 (S.D. N.Y. 2007), judgment aff'd, 562 F.3d 145 (2d Cir. 2009).
Ill.—Commonwealth Edison Co. v. Illinois Commerce Com'n, 398 Ill. App. 3d 510, 338 Ill. Dec. 539, 924 N.E.2d 1065 (2d Dist. 2009).
Kan.—Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007).

5 U.S.—Aves By and Through Aves v. Shah, 914 F. Supp. 443 (D. Kan. 1996), aff'd, 124 F.3d 216 (10th Cir. 1997).
Ill.—Reed v. Farmers Ins. Group, 188 Ill. 2d 168, 242 Ill. Dec. 97, 720 N.E.2d 1052 (1999).

6 U.S.—City of Atlanta v. Metropolitan Atlanta Rapid Transit Authority, 506 F. Supp. 883 (N.D. Ga. 1980), judgment aff'd, 636 F.2d 1084 (5th Cir. 1981).
Del.—Opinion of the Justices, 246 A.2d 90 (Del. 1968).

7 § 509.

8 U.S.—Thornberg v. Jorgensen, 60 F.2d 471 (C.C.A. 3d Cir. 1932).

16A C.J.S. Constitutional Law § 511

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

2. Law Impairing Obligation

§ 511. Federal laws as outside constitutional prohibition

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2664

Congress may impair contract obligations by laws pertinent to the powers conferred on it by the Constitution.

Constitutional provisions against impairing the obligation of contracts do not apply to or govern Congress[1] or the United States,[2] which may pass laws directly or indirectly impairing the obligation of contracts.[3] Indeed, with few exceptions, Congress may legislatively alter contractual arrangements to which it is a party in order to subsequently modify its contractual obligations and limit the corresponding contractual rights of a private entity.[4] This does not mean that Congress may interfere with contract rights at will; it is without power to impair the obligation of contracts by laws acting directly and independently to that end,[5] and may do so only where the act has a direct relation to some enabling power in the Constitution,[6] and if it does not act unreasonably or capriciously and adopts means reasonably suited to the accomplishment of its purposes.[7]

On the other hand, contracts cannot fetter the constitutional authority of Congress when dealing with a subject lying within its control.[8] It has authority to pass legislation pertinent to any of the powers conferred by the Constitution; however, such legislation may operate collaterally or incidentally to impair or destroy the obligation of private contracts[9] and may expressly

prohibit and invalidate contracts, although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt.[10] This principle applies to the constitutional authority of Congress to regulate the currency and establish the monetary system of the country[11] and to pass uniform laws on the subject of bankruptcy.[12]

CUMULATIVE SUPPLEMENT

Cases:

The provision in United States Constitution prohibiting states from passing any law impairing obligation of contract, does not give to Congress the power to provide laws for the general enforcement of contracts, nor power to invest the courts of the United States with jurisdiction over contracts, so as to enable parties to sue upon them in such courts, but does give the power to provide remedies by which the impairment of contracts by state legislation can be counteracted and corrected. Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—In re Webber, 674 F.2d 796 (9th Cir. 1982); In re City of Stockton, Cal., 478 B.R. 8 (Bankr. E.D. Cal. 2012); In re Varanasi, 394 B.R. 430 (Bankr. S.D. Ohio 2008).
La.—Hooter v. Wilson, 273 So. 2d 516 (La. 1973).
Wash.—State ex rel. Starkey v. Alaska Airlines, Inc., 68 Wash. 2d 318, 413 P.2d 352 (1966).
District of Columbia
Congress is not subject to the Contract Clause of the United States Constitution, even when legislating for the District of Columbia.
D.C.—Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Educ. of the District of Columbia, 109 F.3d 774, 117 Ed. Law Rep. 42 (D.C. Cir. 1997).

2 U.S.—National Educ. Association-Rhode Island ex rel. Scigulinsky v. Retirement Bd. of Rhode Island Employees' Retirement System, 172 F.3d 22, 133 Ed. Law Rep. 738 (1st Cir. 1999).
La.—Hooter v. Wilson, 273 So. 2d 516 (La. 1973).
Wash.—State ex rel. Starkey v. Alaska Airlines, Inc., 68 Wash. 2d 318, 413 P.2d 352 (1966).
Prison regulation
A federal inmate could not maintain claims against a prison and a warden, arising from a prison regulation establishing a procedure for warranty work on inmates' watches and radios, under the Contract Clause as the provision applied to the states, not the federal government.
U.S.—Okpala v. Jordan, 193 Fed. Appx. 850 (11th Cir. 2006).
Court of federal claims
The court of federal claims has no jurisdiction to entertain a claim under the Contract Clause of the United States Constitution as the clause does not apply to acts of the United States but is directed at the states.
U.S.—McNeil v. U.S., 78 Fed. Cl. 211 (2007), judgment aff'd, 293 Fed. Appx. 758 (Fed. Cir. 2008).

3 U.S.—Spaulding v. Douglas Aircraft Co., 154 F.2d 419 (C.C.A. 9th Cir. 1946).

4 U.S.—Sierra Club v. Babbitt, 65 F.3d 1502 (9th Cir. 1995).

5 U.S.—Johnson v. U.S., 111 Ct. Cl. 750, 79 F. Supp. 208 (1948).

6 U.S.—Hollingsworth v. Federal Min. & Smelting Co., 74 F. Supp. 1009 (D. Idaho 1947).
Pa.—Highland v. Russell Car & Snow Plow Co., 288 Pa. 230, 135 A. 759 (1927), aff'd, 279 U.S. 253, 49 S. Ct. 314, 73 L. Ed. 688 (1929).
Welfare of citizens
Although Congress can change the law governing any sort of contract, it can do so only to protect the welfare of its citizens.

U.S.—Caola v. U.S., 404 F. Supp. 1101 (D. Conn. 1975).

7 U.S.—Hodgson v. Hamilton Municipal Court, 349 F. Supp. 1125, 60 Ohio Op. 2d 309 (S.D. Ohio 1972).

8 U.S.—United Transp. Union v. Consolidated Rail Corp., 535 F. Supp. 697 (Regional Rail Reorg. Ct. 1982).

9 U.S.—Overnight Motor Transp. Co. v. Missel, 316 U.S. 572, 62 S. Ct. 1216, 86 L. Ed. 1682 (1942).

D.C.—Sakis v. U.S., 103 F. Supp. 292 (D. D.C. 1952).

10 U.S.—Norman v. Baltimore & O.R. Co., 294 U.S. 240, 55 S. Ct. 407, 79 L. Ed. 885, 95 A.L.R. 1352 (1935).

N.Y.—Kearse v. Hornell Const. Corp., 183 Misc. 78, 49 N.Y.S.2d 892 (Sup 1944).

11 U.S.—Norman v. Baltimore & O.R. Co., 294 U.S. 240, 55 S. Ct. 407, 79 L. Ed. 885, 95 A.L.R. 1352 (1935).

12 U.S.—In re Bruntz, 10 B.R. 444 (Bankr. N.D. Iowa 1981).

Bankruptcy clause

The Contract Clause was concerned with the ability of the states, and not of the federal government, to pass laws impairing contractual obligations and was not implicated by Congress's enactment of Chapter 9 of the Bankruptcy Code; Congress, pursuant to the bankruptcy clause, necessarily had the authority to enact laws that impaired contracts.

U.S.—In re City of Detroit, Mich., 504 B.R. 97 (Bankr. E.D. Mich. 2013).

While the Contract Clause is a key navigational star in the firmament of the United States Constitution and the country's economic universe, it is subject to being eclipsed by the bankruptcy clause.

U.S.—In re City of Stockton, Cal., 478 B.R. 8 (Bankr. E.D. Cal. 2012).

End of Document

16A C.J.S. Constitutional Law § 512

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

2. Law Impairing Obligation

§ 512. Ordinances and by-laws

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2663

Any enactment, such as a bylaw or ordinance of a municipal corporation, to which a state gives the force of law, is a statute of the state, within the meaning of the Contract Clause.

The Contract Clause applied to municipalities.[1] Any enactment, such as a bylaw[2] or ordinance of a municipal corporation,[3] to which a state gives the force of law, is a statute of the state, within the meaning of the Contract Clause.[4] Likewise, resolutions passed by the municipal subdivisions of a state in pursuance of delegated legislative authority of the state are laws within the meaning of the Contract Clause and void if they impair the obligations of contracts.[5] However, a city resolution may not be legislation, and thus not implicate the Contract Clause of federal and state constitutions, where the passage of a resolution involved less solemnity and formality than an ordinance or a statute, and the city acted as a board of directors faced with a decision about how to best manage the affairs of a corporation.[6]

A local ordinance which substantially impairs a party's contractual rights can nevertheless survive Contract Clause scrutiny if the impairment is both reasonable and necessary to fulfill an important public purpose.[7] In this context, reasonableness is

determined by the extent to which the ordinance impairs the contract, and necessity depends on whether the ordinance is essential and whether its objectives could be achieved by less drastic alternatives.[8]

Footnotes

1 U.S.—Matsuda v. City and County of Honolulu, 512 F.3d 1148 (9th Cir. 2008).

2 U.S.—Montauk Bus Co., Inc. v. Utica City School Dist., 30 F. Supp. 2d 313, 131 Ed. Law Rep. 974 (N.D. N.Y. 1998).

3 U.S.—Friedman v. City of Chicago Department of Business and Consumer Protection, 48 F. Supp. 3d 1046 (N.D. Ill. 2014); Price v. Pennsylvania Prop. & Cas. Ins. Co. Ass'n, 158 F. Supp. 2d 547 (E.D. Pa. 2001).
Md.—Love v. Bachman, 38 Md. App. 555, 383 A.2d 404 (1978).
Mont.—Local No. 8 Intern. Ass'n of Fire Fighters v. City of Great Falls, 174 Mont. 53, 568 P.2d 541 (1977).
Pa.—Pennsylvania Workers' Compensation Judges Professional Ass'n v. Executive Bd. of Com., 39 A.3d 486 (Pa. Commw. Ct. 2012), aff'd, 620 Pa. 217, 66 A.3d 765 (2013).

4 U.S.—Montauk Bus Co., Inc. v. Utica City School Dist., 30 F. Supp. 2d 313, 131 Ed. Law Rep. 974 (N.D. N.Y. 1998).

5 U.S.—American Federation of State, County and Municipal Employees v. City of Benton, Arkansas, 513 F.3d 874 (8th Cir. 2008).
Mont.—Local No. 8 Intern. Ass'n of Fire Fighters v. City of Great Falls, 174 Mont. 53, 568 P.2d 541 (1977).
N.C.—Wiggs v. Edgecombe County, 361 N.C. 318, 643 S.E.2d 904 (2007).
Ohio—Bass Energy Inc. v. Highland Hts., 193 Ohio App. 3d 725, 2010-Ohio-2102, 954 N.E.2d 130 (8th Dist. Cuyahoga County 2010).

6 U.S.—Taylor v. City of Gadsden, 767 F.3d 1124 (11th Cir. 2014).

7 U.S.—Southern California Gas v. City of Santa Ana, 202 F. Supp. 2d 1129 (C.D. Cal. 2002), aff'd, 336 F.3d 885 (9th Cir. 2003).

8 S.C.—Citizens for Lee County, Inc. v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992).
Burden of proof
To establish that an ordinance was a reasonable means of furthering a legitimate purpose, in the face of a challenge under the constitutional prohibition on impairing obligations of contracts, the town did not have to prove that its choice was the best among available alternatives; rather, the challenger had to prove that there was no rational relationship between the town's ends and its means.
U.S.—Sal Tinnerello & Sons, Inc. v. Town of Stonington, 141 F.3d 46 (2d Cir. 1998).

End of Document

16A C.J.S. Constitutional Law § 513

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

2. Law Impairing Obligation

§ 513. Orders of boards and commissions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2663

The acts of administrative or executive boards or officers are not laws within the meaning of constitutional provisions prohibiting laws impairing the obligation of contracts, but orders of state commissions or other instrumentalities exercising state-delegated authority, legislative in character, are such laws.

Constitutional prohibitions against laws impairing the obligation of contracts are aimed only at the legislative power of the state,[1] and not at the acts of administrative or executive boards or officers,[2] where the officers did not change any laws.[3] The implication of the Contract Clauses of federal and state constitutions requires an act of legislative power that relates to subjects of a permanent or general character. While such lawmaking power may be expressed in a form other than a statute, such as an ordinance of a municipal corporation or political subdivision, administrative actions do not fall within the ambit of the constitutional prohibition.[4]

It is not strictly and literally true, however, that a law of a state must, in order to come within the constitutional prohibitions, be either in the form of a statute enacted by the legislature in the ordinary course of legislation or in the form of a constitution established by the people of the state as their fundamental law.[5] Any enactment, from whatever source originating, to which

a state gives the force of law, including an order of a legislative character made by an instrumentality of the state exercising delegated authority, is a law of the state within the meaning of the Contract Clause.[6] Generally, the latter rule applies to orders of commissions which look to the future and are, therefore, legislative in character.[7] Nevertheless, the fact that a city trade waste commission, in its role as an administrative agency, exercised delegated legislative authority did not warrant application of the Contract Clause to the commission.[8]

Footnotes

1 § 509.

2 U.S.—City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014); Wheelabrator Lisbon Inc. v. Connecticut Dept. of Public Utility Control, 526 F. Supp. 2d 295 (D. Conn. 2006), judgment aff'd, 531 F.3d 183 (2d Cir. 2008); Welch v. Brown, 935 F. Supp. 2d 875 (E.D. Mich. 2013), stay pending appeal denied, 2013 WL 3224416 (E.D. Mich. 2013) and order aff'd, 551 Fed. Appx. 804 (6th Cir. 2014); Jamaica Ash & Rubbish Removal Co., Inc. v. Ferguson, 85 F. Supp. 2d 174 (E.D. N.Y. 2000).

Mass.—Municipal Light Co. of Ashburnham v. Com., 34 Mass. App. Ct. 162, 608 N.E.2d 743 (1993).

Regulatory ratemaking

Regulatory ratemaking does not implicate the Contract Clause of either the state or the federal constitution.

Ill.—Commonwealth Edison Co. v. Illinois Commerce Com'n, 398 Ill. App. 3d 510, 338 Ill. Dec. 539, 924 N.E.2d 1065 (2d Dist. 2009).

3 U.S.—Welch v. Brown, 935 F. Supp. 2d 875 (E.D. Mich. 2013), stay pending appeal denied, 2013 WL 3224416 (E.D. Mich. 2013) and order aff'd, 551 Fed. Appx. 804 (6th Cir. 2014).

4 Pa.—Pennsylvania Workers' Compensation Judges Professional Ass'n v. Executive Bd. of Com., 39 A.3d 486 (Pa. Commw. Ct. 2012), aff'd, 620 Pa. 217, 66 A.3d 765 (2013).

5 Ill.—Thomson v. Thomson, 293 Ill. 584, 127 N.E. 882 (1920).

6 Ill.—Thomson v. Thomson, 293 Ill. 584, 127 N.E. 882 (1920).

Exercise of legislative power required

A resolution of the Port Authority Board of Commissioners must be an exercise of legislative power for the resolution to be a law within the framework of the Contract Clause.

U.S.—National Cold Storage Co. v. Port of New York Authority, 286 F. Supp. 1016 (S.D. N.Y. 1968).

7 U.S.—Grand Trunk Western Ry. Co. v. Railroad Commission of Indiana, 221 U.S. 400, 31 S. Ct. 537, 55 L. Ed. 786 (1911).

Resolutions not legislative actions

A resolution adopted by park commissioners, who voted to cancel all rock concerts for the remainder of the year after a riot occurred at one such concert, could not be considered a "law," under the Contract Clause, where such resolution, by its terms, was made applicable only to a particular situation for a limited period of time and where it did not possess characteristics of a law of general application.

U.S.—Contemporary Music Group, Inc. v. Chicago Park Dist., 343 F. Supp. 505 (N.D. Ill. 1972).

A resolution issued by the Executive Board of the Commonwealth of Pennsylvania and the Department of Labor and Industry (Executive Board) authorizing negotiated one-step longevity increment or lump sum payments for workers' compensation judges, and a subsequent resolution rescinding such authorization, were not "legislative actions" so as to implicate the Contract Clause of the federal or state constitution; the resolutions related to a specific subject and a specific group of employees and not to a subject of a permanent or general character, they related to a particular situation for a limited period of time, and the resolutions were the method by which the Executive Board performed its duty, consistent with the typical actions of management personnel

Pa.—Pennsylvania Workers' Compensation Judges Professional Ass'n v. Executive Bd. of Com., 39 A.3d 486 (Pa. Commw. Ct. 2012), aff'd, 620 Pa. 217, 66 A.3d 765 (2013).

8 U.S.—Jamaica Ash & Rubbish Removal Co., Inc. v. Ferguson, 85 F. Supp. 2d 174 (E.D. N.Y. 2000).

End of Document

16A C.J.S. Constitutional Law § 514

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

2. Law Impairing Obligation

§ 514. Judicial decisions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2660, 2663, 2673

Constitutional prohibitions against impairing the obligation of contracts apply only to legislative and not to judicial action.

Only legislative actions, not judicial actions, can create a viable Contract Clause claim.[1]

Obligations protected by the Contract Clause include not only the express terms of a contract but also contemporaneous state law pertaining to interpretation and enforcement.[2] Nevertheless, constitutional prohibitions against laws impairing the obligation of contracts are aimed only at the legislative power of the state[3] and not at decisions of its courts.[4] Judicial decisions do not, as a general rule, constitute "laws," for purposes of constitutional provisions relating to impairment of contracts,[5] and thus, as a general principle, where such decisions do not expressly, or by necessary implication, give effect to a subsequent law of the state whereby the obligation of a contract is impaired,[6] they are not subject to the prohibition against impairment of contracts.[7] However, in at least one state, it has been held that the validity and obligation of any contract cannot be impaired by any state

court decision altering the construction of the law. Any holding otherwise fundamentally errs in limiting applicability of the Contract Clause of the state constitution to statutory amendments and repeals.[8]

A judgment of a court which wrongly construes a contract, or holds it to be of no binding force, likewise does not come within the inhibition of such constitutional provisions;[9] nor does a mere change in judicial decision come within such prohibition even though it invalidates a contract previously sustained or impairs the validity of a contract made in reliance on prior decisions.[10] The mere fact that the decision of the state court is against the validity of a contract either in whole or in part does not, of itself, present a question under the Contract Clause or give the federal courts jurisdiction to review the decision;[11] and this rule applies where the complained-of state court decision changes a rule of the common law which, by virtue of previous judicial decisions, was established and in force when the contract was made.[12] Even a decision of the highest court of a state overruling a previous decision construing a statute and declaring void a contract made in reliance on the previous decision does not constitute a law impairing the obligation of contracts,[13] and where it does not give effect to a law impairing the obligation of contracts, such decision does not violate the Contract Clause of the Federal Constitution.[14]

Although the constitutional inhibitions do not apply to judicial decisions, the courts are not authorized to violate or impair contract obligations.[15] It has been held that the spirit of the constitutional prohibition against impairment of the obligation of contracts should govern the courts as well as legislative bodies and that the court should never put its seal of judicial approval on any attempt to impair the obligation of contracts;[16] and in at least one jurisdiction, it is held that while what is prohibited is legislative action the effect of which would be the impairment of a contract, the principle has like force when invoked in relation to judicial action and the courts have no power to alter or impair the obligation of contracts.[17]

Footnotes

1 U.S.—Lipscomb v. Columbus Mun. Separate School Dist., 269 F.3d 494, 158 Ed. Law Rep. 200 (5th Cir. 2001).
Wis.—In re Liquidation of American Eagle Ins. Co., 2005 WI App 177, 286 Wis. 2d 689, 704 N.W.2d 44 (Ct. App. 2005).

2 U.S.—Legal Asset Funding, LLC v. Travelers Cas. & Sur. Co., 155 F. Supp. 2d 90 (D.N.J. 2001).

3 § 509.

4 U.S.—Huerta v. Shein, 498 Fed. Appx. 422 (5th Cir. 2012), cert. denied, 133 S. Ct. 2027, 185 L. Ed. 2d 886 (2013); City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014).
Jamaica Ash & Rubbish Removal Co., Inc. v. Ferguson, 85 F. Supp. 2d 174 (E.D. N.Y. 2000).
Ala.—Medical Clinic Bd. of City of Birmingham-Crestwood v. Smelley, 408 So. 2d 1203 (Ala. 1981).
Mass.—Municipal Light Co. of Ashburnham v. Com., 34 Mass. App. Ct. 162, 608 N.E.2d 743 (1993).
Pa.—Pennsylvania Workers' Compensation Judges Professional Ass'n v. Executive Bd. of Com., 39 A.3d 486 (Pa. Commw. Ct. 2012), aff'd, 620 Pa. 217, 66 A.3d 765 (2013).
Tex.—Canal Ins. Co. v. Hopkins, 238 S.W.3d 549 (Tex. App. Tyler 2007).
Denial of motion to quash subpoena
A trial court's decision to deny a motion filed by the representative of a union representing prison social workers to quash the State's subpoena requiring him to testify before a grand jury did not involve any legislation and, thus, did not implicate the state and federal Contract Clauses.
N.H.—In re Grand Jury Subpoena, 155 N.H. 557, 926 A.2d 280 (2007).

5 Ohio—King v. Safeco Ins. Co., 66 Ohio App. 3d 157, 583 N.E.2d 1051 (1st Dist. Hamilton County 1990).
Tex.—Howell v. Texas Workers' Compensation Com'n, 143 S.W.3d 416 (Tex. App. Austin 2004).

6 U.S.—McCombs v. West, 63 F. Supp. 469 (S.D. Fla. 1945), judgment aff'd, 155 F.2d 601 (C.C.A. 5th Cir. 1946).
Ind.—Rouse v. Paidrick, 221 Ind. 517, 49 N.E.2d 528 (1943).

Okla.—Peevyhouse v. Garland Coal & Min. Co., 1962 OK 267, 382 P.2d 109 (Okla. 1962).

7 Ill.—Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 230 Ill. Dec. 229, 693 N.E.2d 358 (1998).

"Judicial legislation"

Constitutional clauses regarding impairment of contracts do not apply to judicial pronouncements regardless of whether such pronouncements could be characterized as "judicial legislation."

Ohio—Johnston v. Johnston, 119 Ohio Misc. 2d 143, 2001-Ohio-4387, 774 N.E.2d 1249 (C.P. 2001).

8 Miss.—Whitaker v. T & M Foods, Ltd., 7 So. 3d 893 (Miss. 2009).

9 Mo.—Guillod v. Kansas City Power & Light Co., 321 Mo. 586, 11 S.W.2d 1036 (1928).

Failure to enforce agreement

The failure to enforce the parties' agreement under a conditional sales contract did not impair an obligation of contract.

U.S.—In re Hoover, 447 F.2d 195, 9 U.C.C. Rep. Serv. 760 (5th Cir. 1971).

10 U.S.—Morton v. Dardanelle Special School Dist. No. 15 of Yell County, Ark., 121 F.2d 423 (C.C.A. 8th Cir. 1941).

Okla.—McCray v. Miller, 1919 OK 282, 78 Okla. 16, 186 P. 1089 (1920).

Change of construction

Changes of construction by courts of their interpretation of terms and obligations of contracts are not within the inhibition of constitutional prohibitions against impairment of the obligation of contracts.

Ill.—Kingston v. Old Nat. Bank of Centralia, 359 Ill. 192, 194 N.E. 213 (1934).

11 U.S.—Tidal Oil Co. v. Flanagan, 263 U.S. 444, 44 S. Ct. 197, 68 L. Ed. 382 (1924).

12 Okla.—McCray v. Miller, 1919 OK 282, 78 Okla. 16, 186 P. 1089 (1920).

13 U.S.—Fleming v. Fleming, 264 U.S. 29, 44 S. Ct. 246, 68 L. Ed. 547 (1924).

Fla.—State v. Greer, 88 Fla. 249, 102 So. 739, 37 A.L.R. 1298 (1924).

Ill.—Prall v. Burckhartt, 299 Ill. 19, 132 N.E. 280, 18 A.L.R. 992 (1921).

Tex.—Casparis v. Fidelity Union Cas. Co., 65 S.W.2d 404 (Tex. Civ. App. Austin 1933), writ refused.

Interpretation of statute

A judicial decision that interprets a statute predating the contract in question cannot trigger unconstitutional interference with existing contractual relations in violation of the Contract Clause.

U.S.—Kinney v. Connecticut Judicial Dept., 974 F.2d 313 (2d Cir. 1992).

14 Cal.—In re Los Angeles County Pioneer Soc., 40 Cal. 2d 852, 257 P.2d 1 (1953).

Fla.—State v. Greer, 88 Fla. 249, 102 So. 739, 37 A.L.R. 1298 (1924).

15 Cal.—Colony Hill v. Ghamaty, 143 Cal. App. 4th 1156, 50 Cal. Rptr. 3d 247 (4th Dist. 2006).

No constitutional authority to rewrite contract

Under the Contract Clause, there is no constitutional authority for a court to rewrite the contract.

Wash.—Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).

16 U.S.—U.S. ex rel. Vermont Inv. Co. v. City of Cocoa, 17 F. Supp. 59 (S.D. Fla. 1936).

Fla.—New England Mut. Life Ins. Co. v. Luxury Home Builders, Inc., 311 So. 2d 160 (Fla. 3d DCA 1975).

17 Pa.—Farber v. Perkiomen Mut. Ins. Co., 370 Pa. 480, 88 A.2d 776 (1952).

End of Document

16A C.J.S. Constitutional Law § 515

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

3. Modes of Exercising Power; Various Particular Powers

§ 515. Police power

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2661, 2672

Constitutional prohibitions against impairment of the obligation of contracts do not obliterate the police power of the states.

Despite the Draconian language of the Contract Clause,[1] the constitutional prohibition against impairing the obligation of contracts is not absolute.[2] Although the Contract Clause appears literally to proscribe any impairment of contract,[3] it is not to be read with literal exactness like a mathematical formula,[4] and it does not act as a complete bar to legislative alterations of existing contractual obligations.[5] Although the language of the Contract Clause is facially absolute, its prohibition must be accommodated to the inherent police power of the state to safeguard the vital interests of its people.[6]

The Contract Clause does not operate to obliterate the police powers of the states,[7] as a state's power to promote the general welfare of its citizens is paramount to any rights under contracts between individuals.[8] Stated otherwise, contractual obligations are subject to the state's inherent police powers to safeguard vital interests of its people.[9] Accordingly, constitutional prohibitions against impairment of contractual obligations do not prevent a proper exercise by the state of its police power[10] by enacting

regulations reasonably necessary to secure the health, safety, morals, comfort, or general welfare of the community,[11] including the state's economic interests.[12] In short, a statute passed as a legitimate exercise of the police power must be upheld even though it incidentally destroys existing contract rights.[13]

Laws which substantially impair the obligations of contracts may be constitutional if they are reasonable and necessary to serve an important public purpose.[14] A significant and legitimate purpose for legislation challenged as impairing a contract is one that remedies a broad and general social or economic problem;[15] the public purpose need not necessarily address an emergency situation.[16] Indeed, it is not the rule that only an emergency of great magnitude can constitutionally justify a state law impairing the obligations of contracts.[17] However, an emergency or calamity may furnish the occasion for the exercise of the power.[18]

If legislation substantially impairs a contract, a balancing of the police power and the rights protected by the Contract Clauses must be performed,[19] and the law may pass constitutional muster only if it is reasonable and necessary to serve an important public purpose.[20] For purposes of determining whether a state regulation that substantially impairs a contractual relationship is based upon reasonable conditions and is of a character appropriate to public purpose justifying the legislation's adoption, in reviewing economic and social regulation, the courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.[21]

In all cases, the exercise of the police power is itself subject to limitation by the constitutional interdiction against impairment of the obligation of contracts,[22] and an emergency will not diminish such constitutional restriction or create a power to legislate in violation thereof.[23] Statutes and ordinances which impair the obligation of contracts are not valid merely because they purport to be enacted in the exercise of the police power; if in fact they are unreasonable, or otherwise beyond the scope of the police power, they fall within the Contract Clause and are unconstitutional and void.[24]

Whether made by the state itself,[25] by municipal corporations,[26] or by individuals or private corporations,[27] the contracts cannot extend to defeat legitimate government authority.[28] They are subject to be interfered with, or otherwise affected by, subsequent statutes[29] enacted in a bona fide and appropriate exercise of the police power,[30] as by the use of reasonable measures toward a legitimate end.[31] Such contracts do not, by reason of the Contract Clause of the Constitution, enjoy any immunity from such legislation[32] regardless of whether the legislative action affects contracts incidentally or directly or indirectly.[33]

Municipal ordinances.

Ordinances enacted by municipal corporations within the scope of the police power lawfully delegated to them are valid notwithstanding such ordinances affect contracts previously made by corporations[34] or individuals.[35] Thus, a municipality may enact legislation that affects the right to contract where it is reasonably necessary to secure the health, safety, and general welfare of the community.[36]

Special interests.

In applying the principle that the Contract Clause does not obliterate the state's police power, the critical inquiry is whether a state is exercising its police power rather than providing a benefit to special interests.[37] Contract Clause analysis hinges upon distinguishing between legitimate exercises of state police power and illegitimate attacks by the state on private ordering of contractual obligations and remedies for the benefit, not of society, but of special interests.[38]

Divestment of power forbidden.

In accordance with the rule that the state may not divest itself, by contract or otherwise, of its police power, one state legislature cannot by any agreement bind itself or its successors not to exercise the police power of the state.[39] The reservation of essential attributes of sovereign power is read into contracts as a postulate of the legal order.[40] Under the reserved powers doctrine, a state cannot be bound, pursuant to the Contract Clause, to a contract forbidding the exercise of its police power.[41] All contracts are made with reference to the possible exercise of the police power of the government and with the possibility of such legislation as an implied term of the law thereof.[42]

CUMULATIVE SUPPLEMENT

Cases:

Even where law does not have sole effect of altering pre-existing contractual duties, to comply with Contract Clause, state must show that regulation protects broad societal interest rather than narrow class. U.S. Const. art. 1, § 10, cl. 1. Association of Equipment Manufacturers v. Burgum, 932 F.3d 727 (8th Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—McGrath v. Rhode Island Retirement Bd. By and Through Mayer, 906 F. Supp. 749 (D.R.I. 1995), judgment aff'd, 88 F.3d 12 (1st Cir. 1996).

2 U.S.—California Hosp. Ass'n v. Maxwell-Jolly, 776 F. Supp. 2d 1129 (E.D. Cal. 2011); Donohue v. Paterson, 715 F. Supp. 2d 306 (N.D. N.Y. 2010); Cranley v. National Life Ins. Co. of Vermont, 144 F. Supp. 2d 291 (D. Vt. 2001), judgment aff'd, 318 F.3d 105 (2d Cir. 2003).
Colo.—Justus v. State, 2014 CO 75, 336 P.3d 202 (Colo. 2014).
Kan.—Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007).
Mich.—Romein v. General Motors Corp., 436 Mich. 515, 462 N.W.2d 555 (1990), aff'd, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 (1992).
N.Y.—Wells Fargo Bank, N.A. v. Meyers, 108 A.D.3d 9, 966 N.Y.S.2d 108 (2d Dep't 2013).
Okla.—Okfuskee County Rural Water Dist. No. 3 v. City of Okemah, 2011 OK CIV APP 65, 257 P.3d 1011 (Div. 3 2011).
S.C.—Kirven v. Central States Health & Life Co., of Omaha, 409 S.C. 30, 760 S.E.2d 794 (2014).
Wash.—In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 (2014).
Conflicting values both recognized
The conflicting values of protecting the right of individuals to order their affairs by contract and allowing the states to exercise essential attributes of sovereign power which are necessarily reserved by the states to safeguard their citizens are both recognized in the analytic framework used to assess the Contract Clause claims.
U.S.—Welch v. Brown, 935 F. Supp. 2d 875 (E.D. Mich. 2013), stay pending appeal denied, 2013 WL 3224416 (E.D. Mich. 2013) and order aff'd, 551 Fed. Appx. 804 (6th Cir. 2014).

3 Cal.—Board of Administration v. Wilson, 52 Cal. App. 4th 1109, 61 Cal. Rptr. 2d 207 (3d Dist. 1997).
Kan.—Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007).
S.C.—Kirven v. Central States Health & Life Co., of Omaha, 409 S.C. 30, 760 S.E.2d 794 (2014).

4 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Donohue v. Paterson, 715 F. Supp. 2d 306 (N.D. N.Y. 2010).

Kan.—Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007).
Ohio—Trumbull Cty. Bd. of Commrs. v. Warren, 142 Ohio App. 3d 599, 756 N.E.2d 690 (11th Dist. Trumbull County 2001).
S.C.—Kirven v. Central States Health & Life Co., of Omaha, 409 S.C. 30, 760 S.E.2d 794 (2014).
Wash.—Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).

5 U.S.—Royer v. USAA Cas. Ins. Co., 781 F. Supp. 2d 767 (N.D. Ind. 2011).
D.C.—West End Tenants Ass'n v. George Washington University, 640 A.2d 718 (D.C. 1994).
Okla.—Okfuskee County Rural Water Dist. No. 3 v. City of Okemah, 2011 OK CIV APP 65, 257 P.3d 1011 (Div. 3 2011).

Limitation

The Contract Clause of the United States Constitution is not construed literally to mean that a state by statute can never impair a party's contractual rights; rather, it is considered within its historical context to create a limitation on a state's power to extinguish preexisting contractual relationships.
U.S.—Stangl v. Occidental Life Ins. Co. of North Carolina, 804 F. Supp. 2d 1224 (W.D. Okla. 2011).

6 U.S.—CFCU Community Credit Union v. Hayward, 552 F.3d 253 (2d Cir. 2009); California Hosp. Ass'n v. Maxwell-Jolly, 776 F. Supp. 2d 1129 (E.D. Cal. 2011); Alliance of Auto. Mfrs., Inc. v. Currey, 984 F. Supp. 2d 32 (D. Conn. 2013), aff'd, 2015 WL 1529018 (2d Cir. 2015); Alliance of Auto. Mfrs., Inc. v. Jones, 897 F. Supp. 2d 1241 (N.D. Fla. 2012); Rhode Island Hospitality Ass'n v. City of Providence ex rel. Lombardi, 775 F. Supp. 2d 416 (D.R.I. 2011), aff'd, 667 F.3d 17 (1st Cir. 2011).
N.Y.—Healthnow New York Inc. v. New York State Ins. Dept., 110 A.D.3d 1216, 973 N.Y.S.2d 387 (3d Dep't 2013).
Ohio—Bass Energy Inc. v. Highland Hts., 193 Ohio App. 3d 725, 2010-Ohio-2102, 954 N.E.2d 130 (8th Dist. Cuyahoga County 2010).
Okla.—City of Tulsa v. State, 2012 OK 47, 278 P.3d 602 (Okla. 2012), as corrected, (May 29, 2012).
Pa.—EmergyCare, Inc. v. Millcreek Tp., 68 A.3d 1 (Pa. Commw. Ct. 2013).

Contract Clause harmonized with police power

Because the Contract Clause must be harmonized with a state's police power to protect its citizens, it must be viewed as imposing only some limits upon the power of a state to abridge existing contractual relationships.
U.S.—Eric M. Berman, P.C. v. City of New York, 895 F. Supp. 2d 453 (E.D. N.Y. 2012).

7 U.S.—Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425 (D.R.I. 1994).
Kan.—Board of Educ. of Unified School Dist. No. 443, Ford County v. Kansas State Bd. of Educ., 266 Kan. 75, 966 P.2d 68, 130 Ed. Law Rep. 308 (1998).
La.—State v. All Property and Cas. Ins. Carriers Authorized and Licensed To Do Business In State, 937 So. 2d 313 (La. 2006).
N.H.—Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Association, 159 N.H. 627, 992 A.2d 624 (2010).
Pa.—South Union Tp. v. Com., 839 A.2d 1179 (Pa. Commw. Ct. 2003), aff'd, 578 Pa. 564, 854 A.2d 476 (2004).
Vt.—Massachusetts Mun. Wholesale Elec. Co. v. State, 161 Vt. 346, 639 A.2d 995 (1994).

8 U.S.—Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006).
Vt.—Massachusetts Mun. Wholesale Elec. Co. v. State, 161 Vt. 346, 639 A.2d 995 (1994).

9 U.S.—Maine Ass'n of Retirees v. Board of Trustees of Maine Public Employees Retirement System, 954 F. Supp. 2d 38 (D. Me. 2013), aff'd, 758 F.3d 23, 307 Ed. Law Rep. 617 (1st Cir. 2014); Rhode Island Hospitality Ass'n v. City of Providence ex rel. Lombardi, 775 F. Supp. 2d 416 (D.R.I. 2011), aff'd, 667 F.3d 17 (1st Cir. 2011).
Conn.—State Library v. Freedom of Information Com'n, 50 Conn. App. 491, 717 A.2d 842 (1998).
D.C.—West End Tenants Ass'n v. George Washington University, 640 A.2d 718 (D.C. 1994).
Ill—Consiglio v. Department of Financial and Professional Regulation, 2013 IL App (1st) 121142, 370 Ill. Dec. 664, 988 N.E.2d 1020 (App. Ct. 1st Dist. 2013), appeal allowed, 374 Ill. Dec. 563, 996 N.E.2d 10 (Ill. 2013) and appeal allowed, 374 Ill. Dec. 563, 996 N.E.2d 10 (Ill. 2013) and appeal allowed, 374 Ill. Dec. 564, 996 N.E.2d 11 (Ill. 2013) and aff'd, 2014 IL 116023, 388 Ill. Dec. 878, 25 N.E.3d 570 (Ill. 2014).

Mich.—Health Care Ass'n Workers Comp. Fund v. Director of the Bureau of Worker's Comp., Department of Consumer and Industry Services, 265 Mich. App. 236, 694 N.W.2d 761 (2005).

N.J.—Brown v. Township of Old Bridge, 319 N.J. Super. 476, 725 A.2d 1154 (App. Div. 1999).

Wash.—In re Estate of Hambleton, 181 Wash. 2d 802, 335 P.3d 398 (2014).

Reserved power

Under the "reserved powers doctrine," which operates as a restriction on the Contract Clause, the court must attempt to reconcile the strictures of the Contract Clause with the essential attributes of sovereign power necessarily reserved by the states to safeguard the welfare of their citizens.

Kan.—Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007).

Striking balance

A court's core task in resolving Contract Clause claims is to strike a balance between constitutionally protected contract rights and the state's legitimate exercise of its reserved police power.

N.H.—State Employees' Ass'n of New Hampshire v. State, 161 N.H. 730, 20 A.3d 961 (2011).

10 U.S.—Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).

Ill.—City of Evanston v. Create, Inc., 85 Ill. 2d 101, 51 Ill. Dec. 688, 421 N.E.2d 196 (1981).

N.J.—Cherry Hill Fire Co. No. 1 v. Cherry Hill Fire Dist. No. 3, 275 N.J. Super. 632, 646 A.2d 1150 (Ch. Div. 1994).

N.M.—Temple Baptist Church, Inc. v. City of Albuquerque, 1982-NMSC-055, 98 N.M. 138, 646 P.2d 565 (1982).

Nev.—State v. Glusman, 98 Nev. 412, 651 P.2d 639 (1982).

Narrow construction

The Contract Clause imposes some limits upon the power of a state to abridge existing contractual relationships, but, despite its seemingly absolute language, the clause does not prohibit a state from acting for the general good of the public, even where contractual obligations may be affected; rather, the clause is construed narrowly in order to ensure that local governments retain the flexibility to exercise their police powers effectively.

U.S.—Ching Young v. City and County of Honolulu, 639 F.3d 907 (9th Cir. 2011).

11 U.S.—Chico's Pizza Franchises, Inc. v. Sisemore, 544 F. Supp. 248 (E.D. Wash. 1981), aff'd, 685 F.2d 440 (9th Cir. 1982).

Conn.—Real Estate Listing Service, Inc. v. Connecticut Real Estate Commission, 179 Conn. 128, 425 A.2d 581, 17 A.L.R.4th 753 (1979).

Ohio—Ohio Edison Co. v. Power Siting Commission, 56 Ohio St. 2d 212, 10 Ohio Op. 3d 371, 383 N.E.2d 588 (1978).

Okla.—Adolph Coors Co. v. Oklahoma Alcoholic Beverage Control Bd., 1978 OK 119, 584 P.2d 717 (Okla. 1978).

Contracts hostile to public morals, health, or safety

The state's power to impair preexisting contracts is not limited by the Contract Clauses of the state and federal constitutions to those contracts that are hostile to public morals, health, or safety.

Wis.—Dairyland Greyhound Park, Inc. v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408 (2006).

Legislative discretion

The state legislature has wide discretion in determining what is necessary as an exercise of police power to protect the general welfare of the people, and, so far as the constitutional issue is concerned, the power of the state, when otherwise justified, is not diminished because a private contract may be affected.

U.S.—East N.Y. Sav. Bank v. Hahn, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945).

12 U.S.—City of El Paso v. Simmons, 379 U.S. 497, 85 S. Ct. 577, 13 L. Ed. 2d 446 (1965).

La.—Louisiana Ins. Guaranty Ass'n v. Guglielmo, 276 So. 2d 720 (La. Ct. App. 1st Cir. 1973), writ denied, 279 So. 2d 690 (La. 1973).

N.Y.—Security Unit Emp., Council 82, Am. Federation of State, County and Municipal Emp., AFL-CIO v. Rockefeller, 76 Misc. 2d 435, 351 N.Y.S.2d 348 (Sup 1974).

Economic emergencies

Even big, totally unpredictable impairments of obligation of contracts can survive a challenge under the Contract Clause if they are responsive to economic emergencies.

U.S.—Donohue v. Mangano, 886 F. Supp. 2d 126 (E.D. N.Y. 2012).

Fiscal emergency

Broadly speaking, a state government's interest in addressing a fiscal emergency constitutes a "legitimate public interest," for purposes of determining whether legislation responsive to the emergency violates the Contract Clause.

U.S.—Donohue v. Paterson, 715 F. Supp. 2d 306 (N.D. N.Y. 2010).

Unprecedented emergencies

Although economic concerns can give rise to a city's legitimate use of police power, such concerns must be related to unprecedented emergencies, such as mass foreclosures caused by a Great Depression; further, to survive challenge under the Contract Clause, any law addressing such concerns must deal with a broad, generalized economic or social problem.

U.S.—American Federation of State, County and Municipal Employees v. City of Benton, Arkansas, 513 F.3d 874 (8th Cir. 2008).

13 Pa.—Borough of Glendon v. Department of Environmental Resources, 145 Pa. Commw. 238, 603 A.2d 226 (1992).

14 U.S.—CFCU Community Credit Union v. Hayward, 552 F.3d 253 (2d Cir. 2009); Maine Educ. Ass'n Benefits Trust v. Cioppa, 842 F. Supp. 2d 373, 281 Ed. Law Rep. 1003 (D. Me. 2012).

Me.—Kittery Retail Ventures, LLC v. Town of Kittery, 2004 ME 65, 856 A.2d 1183 (Me. 2004).

R.I.—Retired Adjunct Professors of the State of R.I. v. Almond, 690 A.2d 1342, 117 Ed. Law Rep. 205 (R.I. 1997).

S.C.—Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000).

Balancing

The balancing of police power and rights protected by Contract Clauses must be performed, and a bill or law which substantially impairs a contractual obligation may pass constitutional muster only if it is reasonable and necessary to serve an important public purpose.

N.H.—Opinion of the Justices, 135 N.H. 625, 609 A.2d 1204 (1992).

Public interest not always sufficient

The Contract Clause of the Constitution limits the otherwise legitimate exercise of state legislative authority, and existence of an important public interest is not always sufficient to overcome that limitation; moreover, the scope of the state's reserved power depends on the nature of the contractual relationship with which the challenged law conflicts.

U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).

15 U.S.—CFCU Community Credit Union v. Hayward, 552 F.3d 253 (2d Cir. 2009); United Healthcare Ins. Co. v. Davis, 602 F.3d 618 (5th Cir. 2010); Cycle City, Ltd. v. Harley-Davidson Motor Co., Inc., 2014 WL 7714890 (D. Haw. 2014).

Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).

Wis.—Society Ins. v. Labor & Industry Review Com'n, 2010 WI 68, 326 Wis. 2d 444, 786 N.W.2d 385 (2010).

16 U.S.—Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).

Tex.—Liberty Mut. Ins. Co. v. Texas Dept. of Ins., 187 S.W.3d 808 (Tex. App. Austin 2006).

Wis.—Society Ins. v. Labor & Industry Review Com'n, 2010 WI 68, 326 Wis. 2d 444, 786 N.W.2d 385 (2010).

17 U.S.—Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978).

18 Ariz.—Pouquette v. O'Brien, 55 Ariz. 248, 100 P.2d 979 (1940).

N.Y.—Patterson v. Carey, 41 N.Y.2d 714, 395 N.Y.S.2d 411, 363 N.E.2d 1146 (1977).

As to emergency legislation under the police power, generally, see § 714.

19 N.H.—Cloutier v. State, 163 N.H. 445, 42 A.3d 816 (2012).

Okla.—Okfuskee County Rural Water Dist. No. 3 v. City of Okemah, 2011 OK CIV APP 65, 257 P.3d 1011 (Div. 3 2011).

20 N.H.—Cloutier v. State, 163 N.H. 445, 42 A.3d 816 (2012).

21 U.S.—Cycle City, Ltd. v. Harley-Davidson Motor Co., Inc., 2014 WL 7714890 (D. Haw. 2014).

22 U.S.—Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978).

Md.—Robert T. Foley Co. v. Washington Suburban Sanitary Commission, 283 Md. 140, 389 A.2d 350 (1978).

Reduction of property values limited

Although values incident to property may, under the police power, be diminished to a certain extent without paying therefor, yet this power is subject to limitation by the constitutional provision against impairing the obligation of contracts.

U.S.—Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 S. Ct. 158, 67 L. Ed. 322, 28 A.L.R. 1321 (1922).

23 Mass.—In re Opinions of the Justices, 293 Mass. 589, 199 N.E. 538 (1935).

N.Y.—Hoard v. Luther, 251 A.D. 692, 297 N.Y.S. 718 (4th Dep't 1937).

Economic necessity insufficient

Economic necessity, while it may furnish a reason for passage of a law, will not place the law beyond the reach of constitutional guaranties concerning obligations of contract.

Cal.—Brown v. Ferdon, 5 Cal. 2d 226, 54 P.2d 712 (1936).

24 U.S.—E & E Hauling, Inc. v. Forest Preserve Dist. of Du Page County, Ill., 613 F.2d 675 (7th Cir. 1980).

Cal.—Castleman v. Scudder, 81 Cal. App. 2d 737, 185 P.2d 35 (3d Dist. 1947).

N.Y.—City of New York v. Town of Colchester, 66 Misc. 2d 83, 320 N.Y.S.2d 156 (Sup 1971).

N.C.—Victory Cab Co. v. Shaw, 232 N.C. 138, 59 S.E.2d 573 (1950).

25 U.S.—Barlow v. a P Smith Mfg Co, 346 U.S. 861, 74 S. Ct. 107, 98 L. Ed. 373 (1953).

Cal.—Alameda County v. Janssen, 16 Cal. 2d 276, 106 P.2d 11, 130 A.L.R. 1141 (1940).

Kan.—Mizer v. Kansas Bostwick Irr. Dist. No. 2, 172 Kan. 157, 239 P.2d 370 (1951).

26 Me.—Baxter v. Waterville Sewerage Dist., 146 Me. 211, 79 A.2d 585 (1951).

N.J.—A. P. Smith Mfg. Co. v. Barlow, 26 N.J. Super. 106, 97 A.2d 186 (Ch. Div. 1953), judgment aff'd, 13 N.J. 145, 98 A.2d 581, 39 A.L.R.2d 1179 (1953).

Pa.—Helicon Corp. v. Borough of Brownsville, 68 Pa. Commw. 375, 449 A.2d 118 (1982).

27 D.C.—Sakis v. U.S., 103 F. Supp. 292 (D. D.C. 1952).

Me.—Baxter v. Waterville Sewerage Dist., 146 Me. 211, 79 A.2d 585 (1951).

Nev.—Koscot Interplanetary, Inc. v. Draney, 90 Nev. 450, 530 P.2d 108 (1974).

N.J.—A. P. Smith Mfg. Co. v. Barlow, 26 N.J. Super. 106, 97 A.2d 186 (Ch. Div. 1953), judgment aff'd, 13 N.J. 145, 98 A.2d 581, 39 A.L.R.2d 1179 (1953).

28 Cal.—Ballarini, in Behalf of Lodge 1327, Intern. Ass'n of Machinists, Production & Aeronautical Workers v. Schlage Lock Co., 100 Cal. App. 2d Supp. 859, 226 P.2d 771 (App. Dep't Super. Ct. 1950).

Fla.—Southern Utilities Co. v. City of Palatka, 86 Fla. 583, 99 So. 236 (1923), aff'd, 268 U.S. 232, 45 S. Ct. 488, 69 L. Ed. 930 (1925).

Neb.—Placek v. Edstrom, 151 Neb. 225, 37 N.W.2d 203 (1949).

29 U.S.—Comtronics, Inc. v. Puerto Rico Telephone Co., 409 F. Supp. 800 (D.P.R. 1975), judgment aff'd, 553 F.2d 701 (1st Cir. 1977).

Ala.—Garrett v. Colbert County Bd. of Educ., 255 Ala. 86, 50 So. 2d 275 (1950).

Kan.—Mizer v. Kansas Bostwick Irr. Dist. No. 2, 172 Kan. 157, 239 P.2d 370 (1951).

N.J.—A. P. Smith Mfg. Co. v. Barlow, 26 N.J. Super. 106, 97 A.2d 186 (Ch. Div. 1953), judgment aff'd, 13 N.J. 145, 98 A.2d 581, 39 A.L.R.2d 1179 (1953).

Tenn.—Profill Development, Inc. v. Dills, 960 S.W.2d 17 (Tenn. Ct. App. 1997).

30 Ind.—Bruck v. State ex rel. Money, 228 Ind. 189, 91 N.E.2d 349 (1950).

N.J.—A. P. Smith Mfg. Co. v. Barlow, 26 N.J. Super. 106, 97 A.2d 186 (Ch. Div. 1953), judgment aff'd, 13 N.J. 145, 98 A.2d 581, 39 A.L.R.2d 1179 (1953).

Pa.—In re Philadelphia Elec. Co., 352 Pa. 457, 43 A.2d 116 (1945).

Tenn.—Profill Development, Inc. v. Dills, 960 S.W.2d 17 (Tenn. Ct. App. 1997).

31 U.S.—Prudential Property and Cas. Co. v. Insurance Commission of South Carolina Dept. of Ins., 534 F. Supp. 571 (D.S.C. 1982), judgment aff'd, 699 F.2d 690 (4th Cir. 1983).

Ala.—Garrett v. Colbert County Bd. of Educ., 255 Ala. 86, 50 So. 2d 275 (1950).

Cal.—San Diego White Truck Co. v. Swift, 96 Cal. App. 3d 88, 157 Cal. Rptr. 745 (4th Dist. 1979).

La.—Hooter v. Wilson, 273 So. 2d 516 (La. 1973).

N.Y.—Farrell v. Drew, 19 N.Y.2d 486, 281 N.Y.S.2d 1, 227 N.E.2d 824 (1967).

N.C.—Victory Cab Co. v. Shaw, 232 N.C. 138, 59 S.E.2d 573 (1950).

32 U.S.—East N.Y. Sav. Bank v. Hahn, 326 U.S. 230, 66 S. Ct. 69, 90 L. Ed. 34, 160 A.L.R. 1279 (1945).
Ark.—Sewer Imp. Dist. No. 1 of Wynne v. Delinquent Lands, 188 Ark. 738, 68 S.W.2d 80 (1934).
La.—State ex rel. Porterie v. Walmsley, 183 La. 139, 162 So. 826 (1935).
N.J.—A. P. Smith Mfg. Co. v. Barlow, 26 N.J. Super. 106, 97 A.2d 186 (Ch. Div. 1953), judgment aff'd, 13 N.J. 145, 98 A.2d 581, 39 A.L.R.2d 1179 (1953).
N.Y.—Wolff v. Mortgage Commission, 270 N.Y. 428, 1 N.E.2d 835 (1936).

33 U.S.—Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934).
Mich.—Brda v. Chrysler Corp., 50 Mich. App. 332, 213 N.W.2d 295 (1973).
Okla.—East Central Oklahoma Elec. Co-op., Inc. v. Public Service Co., 1970 OK 80, 469 P.2d 662 (Okla. 1970).
Pa.—Cianfrani v. Com., State Emp. Retirement Bd., 57 Pa. Commw. 143, 426 A.2d 1260 (1981), order aff'd, 501 Pa. 189, 460 A.2d 753 (1983).

34 U.S.—City of Dayton, Ohio, v. City R. Co., 16 F.2d 401 (C.C.A. 6th Cir. 1926).
Disposal of solid waste
County waste-flow control ordinances were adopted to provide for long-term disposal of solid waste, which, for purposes of a Contract Clause challenge to the ordinances, was a legitimate exercise of the police power.
Pa.—Empire Sanitary Landfill, Inc. v. Com., Dept. of Environmental Resources, 165 Pa. Commw. 442, 645 A.2d 413 (1994), order aff'd, 546 Pa. 315, 684 A.2d 1047 (1996).

35 N.J.—Sunrise Village Associates v. Borough of Roselle Park, 181 N.J. Super. 567, 438 A.2d 945 (Law Div. 1980), judgment aff'd, 181 N.J. Super. 565, 438 A.2d 944 (App. Div. 1981).
N.M.—Temple Baptist Church, Inc. v. City of Albuquerque, 1982-NMSC-055, 98 N.M. 138, 646 P.2d 565 (1982).
Nude dancing
An ordinance regulating nude dancing did not constitute impairment of contractual obligations and was constitutional where, even if the ordinance did impair an alleged contractual agreement between nude dancers and customers from whom the dancers received tips, impairment was reasonable and necessary to serve important public health and safety purposes.
Fla.—3299 N. Federal Highway, Inc. v. Board of County Com'rs of Broward County, 646 So. 2d 215 (Fla. 4th DCA 1994), opinion clarified, (Nov. 29, 1994).

36 Ill.—Alarm Detection Systems, Inc. v. Village of Hinsdale, 326 Ill. App. 3d 372, 260 Ill. Dec. 599, 761 N.E.2d 782 (2d Dist. 2001).

37 U.S.—Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425 (D.R.I. 1994).
D.C.—West End Tenants Ass'n v. George Washington University, 640 A.2d 718 (D.C. 1994).
Idaho—CDA Dairy Queen, Inc. v. State Ins. Fund, 154 Idaho 379, 299 P.3d 186 (2013).
Tex.—Liberty Mut. Ins. Co. v. Texas Dept. of Ins., 187 S.W.3d 808 (Tex. App. Austin 2006).
Requirement of public purpose
The requirement that a law impairing a contractual relationship serve a public purpose guarantees that the state is exercising its police power rather than providing a benefit to a special interest.
Okla.—City of Tulsa v. State, 2012 OK 47, 278 P.3d 602 (Okla. 2012), as corrected, (May 29, 2012).
Wash.—Optimer Intern., Inc. v. RP Bellevue, LLC, 151 Wash. App. 954, 214 P.3d 954 (Div. 1 2009), judgment aff'd, 170 Wash. 2d 768, 246 P.3d 785 (2011).
Legitimate public purpose
A legitimate public purpose, as would justify a state law that substantially impairs contracts, is one aimed at remedying an important general social or economic problem rather than providing a benefit to special interests.
U.S.—Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006).
Insufficient justification
To justify impairing a contract with the state, the law's public purpose must be one that implicates the state's police power, such as by remedying a broad and general social problem; providing a benefit to a narrow group or special interest is insufficient justification.
U.S.—United Healthcare Ins. Co. v. Davis, 602 F.3d 618 (5th Cir. 2010).

38 U.S.—Storer Cable Communications v. City of Montgomery, Ala., 806 F. Supp. 1518 (M.D. Ala. 1992).

39 Cal.—Ballarini, in Behalf of Lodge 1327, Intern. Ass'n of Machinists, Production & Aeronautical Workers v. Schlage Lock Co., 100 Cal. App. 2d Supp. 859, 226 P.2d 771 (App. Dep't Super. Ct. 1950).
La.—Higginbotham v. City of Baton Rouge, 190 La. 821, 183 So. 168 (1938), judgment aff'd, 306 U.S. 535, 59 S. Ct. 705, 83 L. Ed. 968 (1939).
N.J.—A. P. Smith Mfg. Co. v. Barlow, 26 N.J. Super. 106, 97 A.2d 186 (Ch. Div. 1953), judgment aff'd, 13 N.J. 145, 98 A.2d 581, 39 A.L.R.2d 1179 (1953).
As to the surrender of police power, see § 704.

No abdication or bargaining away

The Contract Clause does not have the effect of overriding the power of the state to establish all regulations that are reasonably necessary to secure the health, safety, and general welfare of the community; this power can neither be abdicated nor bargained away.
U.S.—Bishop v. Oakstone Academy, 477 F. Supp. 2d 876, 218 Ed. Law Rep. 429 (S.D. Ohio 2007).

Environmental regulations

Because the police power includes regulations designed to promote the public health, the public morals, or the public safety, which necessarily includes environmental protection, it follows that the State cannot create contract rights that restrict its power to impose environmental regulations.
U.S.—Pure Wafer, Inc. v. City of Prescott, 14 F. Supp. 3d 1279 (D. Ariz. 2014).

40 U.S.—Wright v. Union Central Life Ins. Co., 304 U.S. 502, 58 S. Ct. 1025, 82 L. Ed. 1490 (1938).

41 U.S.—Matsuda v. City and County of Honolulu, 512 F.3d 1148 (9th Cir. 2008).

Scope

The scope of the State's reserved power depends on the nature of the contractual relationship with which the challenged law conflicts; thus, the basis for the reserved-powers doctrine differs when a state impairs the obligation of its own contract from when a state's general regulatory measures impair private contracts to which the State is not a party.
U.S.—Pure Wafer, Inc. v. City of Prescott, 14 F. Supp. 3d 1279 (D. Ariz. 2014).

42 U.S.—Northwestern Nat. Life Ins. Co. v. Jordan, 447 F. Supp. 856 (D. Nev. 1978).
N.J.—Stamboulos v. McKee, 134 N.J. Super. 567, 342 A.2d 529 (App. Div. 1975).
W. Va.—Security Nat. Bank & Trust Co. v. First W. Va. Bancorp., Inc., 166 W. Va. 775, 277 S.E.2d 613 (1981).

End of Document

16A C.J.S. Constitutional Law § 516

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

3. Modes of Exercising Power; Various Particular Powers

§ 516. Power of eminent domain

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2674

Property may generally be taken under the power of eminent domain without violating constitutional provisions against impairing the obligation of contracts.

The power of eminent domain, like the police power, is a sovereign power of the states,[1] not limited by the Federal Constitution otherwise than by the requirement of due process of law.[2] It authorizes the taking for public use of all property, whether tangible or intangible,[3] and it is not subject to the Contract Clause.[4] Thus, the State may, on making due compensation, appropriate for public use the contract itself or property, the taking of which will interfere with, or prevent further performance of, the contract, and statutes and ordinances directing this to be done do not contravene the Contract Clause of the Constitution.[5]

The exercise of powers that are inherent in and essential to the effective operation of government, such as eminent domain, cannot be contracted away.[6] Thus, a municipality[7] cannot, by contract, deprive itself of the right to exercise the power of eminent domain, nor can it deprive any subsequent legislature of the power.[8]

Footnotes

1 Kan.—Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007).

La.—City of Thibodaux v. Louisiana Power & Light Co., 126 So. 2d 24 (La. Ct. App. 1st Cir. 1960).

2 La.—City of Thibodaux v. Louisiana Power & Light Co., 126 So. 2d 24 (La. Ct. App. 1st Cir. 1960).

Presumption

The existence of the power of eminent domain must be presumed to be known and recognized by all persons, and it need never be carried into express stipulations.

Ind.—Southern Indiana Gas & Elec. Co. v. City of Boonville, 215 Ind. 552, 20 N.E.2d 648 (1939).

3 U.S.—City of Cincinnati v. Louisville & N.R. Co., 223 U.S. 390, 32 S. Ct. 267, 56 L. Ed. 481 (1912).

Federal power

Valid provisions of contractual obligations can be nullified and rendered inoperative by acts of the federal government under its constitutional power of eminent domain.

U.S.—U.S. v. 1846.77 Acres of Land, More or Less, in Russell and Clinton Counties, Ky., 48 F. Supp. 721 (W.D. Ky. 1942).

4 Kan.—Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007).

N.Y.—Westchester Creek Corp. v. New York City School Const. Authority, 286 A.D.2d 154, 730 N.Y.S.2d 95, 156 Ed. Law Rep. 1269 (1st Dep't 2001), order aff'd, 98 N.Y.2d 298, 746 N.Y.S.2d 684, 774 N.E.2d 749, 169 Ed. Law Rep. 364 (2002).

5 U.S.—Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934).

Fla.—Shavers v. Duval County, 73 So. 2d 684 (Fla. 1954).

Ga.—City of Atlanta v. Airways Parking Co., 225 Ga. 173, 167 S.E.2d 145 (1969).

Ky.—City of Covington v. Sanitation Dist. No. 1 of Campbell and Kenton Counties, 301 S.W.2d 885 (Ky. 1957).

N.J.—New Jersey Turnpike Authority v. Bowley, 27 N.J. 549, 143 A.2d 558 (1958).

6 N.Y.—Kaufmann's Carousel, Inc. v. City of Syracuse Indus. Development Agency, 301 A.D.2d 292, 750 N.Y.S.2d 212 (4th Dep't 2002).

Effect of Contract Clause

The Contract Clause cannot be used to bind a state to a contract that prevents it from exercising its power of eminent domain.

U.S.—Matsuda v. City and County of Honolulu, 512 F.3d 1148 (9th Cir. 2008).

Future legislative action

That a state legislature has by statute given assurance that it will not do so does not mean, under the Contract Clause, that the legislature cannot later take property by eminent domain or paying just compensation.

U.S.—Lipscomb v. Columbus Mun. Separate School Dist., 269 F.3d 494, 158 Ed. Law Rep. 200 (5th Cir. 2001).

7 Ohio—Sargent v. City of Cincinnati, 110 Ohio St. 444, 2 Ohio L. Abs. 389, 144 N.E. 132 (1924).

To open or vacate streets

A city cannot irrevocably bargain away the right and duty to vacate streets, or its power to open them, when the occasion requires it.

Pa.—Titusville Amusement Co. v. Titusville Iron Works Co., 286 Pa. 561, 134 A. 481 (1926).

8 U.S.—Northwestern Nat. Life Ins. Co. v. Jordan, 447 F. Supp. 856 (D. Nev. 1978).

School district

A predecessor county school district, as a state entity, could not have entered into a contract that limited the State's exercise of the State's inherent power of eminent domain, and thus, the successor district was not precluded, under the Contract Clause, from exercising its statutorily delegated eminent domain power to acquire a reversionary interest in land deeded to the predecessor district, which deed contained a reversionary clause which was applicable if the land was not used for school purposes.

Kan.—Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007).

End of Document

16A C.J.S. Constitutional Law § 517

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

3. Modes of Exercising Power; Various Particular Powers

§ 517. Power of taxation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2675, 2718

Constitutional provisions against impairing the obligation of contracts are limitations on the taxing power, but the imposition of new or additional taxes is not generally prevented thereby.

A tax is not an impairment of contracts within the meaning of the Federal Constitution.[1] Hence, the imposition of new or additional taxes is not prevented by constitutional provisions against impairing the obligation of contracts.[2]

Contract rights are not above the taxing power,[3] and all contracts are made subject to the right and power of the state to change its tax laws.[4] Thus, a change in taxes cannot be blocked by contract pursuant to a claim that the change unconstitutionally impaired contractual rights.[5] Furthermore, a contract between individuals cannot have the effect of limiting or depriving the state or any municipal subdivision of any power of taxation otherwise belonging to it;[6] nor may a state[7] or a municipal corporation[8] contract away[9] or limit the taxing powers of the legislature.[10] However, a state may create irrevocable contract rights that limit the use of its taxing and spending powers even though such contracts limit the state's future exercise of discretion in material ways.[11]

The constitutional provision against impairing contract obligations is a limitation on the taxing power, as well as on all legislation, whatever form it may assume, which power must be exercised consistently with the principles that preserve the inviolability of contracts.[12] Moreover, the taxing power cannot be exercised so as to impair the obligation of contracts by directly abrogating or diminishing the means by which contracts entered into in reliance on such taxing power can be performed.[13]

In order for the constitutional limitation against impairment of the obligation of contracts to apply, it must appear that the contract involved belongs to a class which the State cannot make subordinate to its taxing power or that the State is proceeding in an arbitrary or unlawful manner.[14]

Method of collection.

In general, there is no contract between the taxpayer and the State that the State will not vary the existing mode of collecting taxes, so the State may adopt new or additional remedies for the collection of taxes or assessments, or change the consequences for delinquency, without any violation of the Contract Clause;[15] nor are statutes changing the rules of evidence invalid as applied to pending suits for delinquent taxes.[16]

Release of delinquent taxes.

Taxes are not imposed by contract, and so the State can, by retroactive statute, release delinquent taxpayers from liabilities due the State.[17]

Tax credits.

For the purpose of the constitutional Contract Clause, a statute enhancing income tax credits and other benefits for persons who owned vehicles powered by alternative fuel did not create a contract between the state and taxpayers who converted motor homes to alternative fuel vehicles (AFV) but instead merely declared the state's policy to improve air quality.[18] Even if the statute enhancing income tax credits and other benefits for persons who owned vehicles powered by alternative fuel created a contract right between the state and taxpayers who converted motor homes to AFV, the change in law did not constitute an invalid impairment under the Contract Clause. It was reasonable for taxpayers to assume the law could change especially in light of their concession that the benefits in law sounded "a little too good to be true." Even if changes in the statute substantially impaired the contract rights of the taxpayers who converted their vehicles, the law was still valid under the Contract Clause as reasonable and appropriate to accomplish an important public purpose in light of loopholes in the law and escalating costs that needed to be addressed.[19]

Footnotes

1 U.S.—Arsberry v. Illinois, 244 F.3d 558 (7th Cir. 2001).

2 U.S.—Lake Superior Consol. Iron Mines v. Lord, 271 U.S. 577, 46 S. Ct. 627, 70 L. Ed. 1093 (1926).
Cal.—Western Contracting Corp. v. State Bd. of Equalization, 39 Cal. App. 3d 341, 114 Cal. Rptr. 227 (2d Dist. 1974).
Ga.—Cherokee Brick & Tile Co. v. Redwine, 209 Ga. 691, 75 S.E.2d 550 (1953).
Md.—Weaver v. Prince George's County, 34 Md. App. 189, 366 A.2d 1048 (1976), judgment aff'd, 281 Md. 349, 379 A.2d 399 (1977).
R.I.—Moore v. Langton, 92 R.I. 141, 167 A.2d 558 (1961).
Taxing proceeds of contract
An obligation of a contract is not impaired by a later taxing statute taxing the proceeds of the contract if it does not prevent receipt of proceeds under the contract.

Ga.—Airways Parking Co. v. City of Atlanta, 229 Ga. 70, 189 S.E.2d 405 (1972).

3 Fla.—Straughn v. Camp, 293 So. 2d 689 (Fla. 1974).

N.J.—Singer Sewing Mach. Co. v. New Jersey Unemployment Compensation Commission, 128 N.J.L. 611, 27 A.2d 889 (N.J. Sup. Ct. 1942), judgment aff'd, 130 N.J.L. 173, 31 A.2d 818 (N.J. Ct. Err. & App. 1943).

4 U.S.—Barwise v. Sheppard, 299 U.S. 33, 57 S. Ct. 70, 81 L. Ed. 23 (1936).

Fla.—Daytona Beach Racing and Recreational Facilities Dist. v. Volusia County, 355 So. 2d 175 (Fla. 1st DCA 1978), aff'd, 372 So. 2d 419 (Fla. 1979).

Ky.—Cotton v. Walton-Verona Independent Graded School Dist., 295 Ky. 478, 174 S.W.2d 712 (1943).

N.D.—Vaagen v. Judt, 70 N.D. 556, 296 N.W. 519 (1941).

Okla.—Essley v. Oklahoma Tax Com'n, 1946 OK 44, 196 Okla. 473, 168 P.2d 111 (1946).

W. Va.—Cole v. Pond Fork Oil & Gas Co., 127 W. Va. 762, 35 S.E.2d 25, 160 A.L.R. 970 (1945).

5 Pa.—South Union Tp. v. Com., 839 A.2d 1179 (Pa. Commw. Ct. 2003), aff'd, 578 Pa. 564, 854 A.2d 476 (2004).

6 U.S.—Barwise v. Sheppard, 299 U.S. 33, 57 S. Ct. 70, 81 L. Ed. 23 (1936).

Md.—Weaver v. Prince George's County, 34 Md. App. 189, 366 A.2d 1048 (1976), judgment aff'd, 281 Md. 349, 379 A.2d 399 (1977).

Mont.—Forbes v. Mid-Northern Oil Co., 100 Mont. 10, 45 P.2d 673 (1935).

W. Va.—Cole v. Pond Fork Oil & Gas Co., 127 W. Va. 762, 35 S.E.2d 25, 160 A.L.R. 970 (1945).

Sales tax

Obligation of contracts involving sale of materials is not unconstitutionally impaired by a subsequent sales tax.

Ark.—Wiseman v. Gillioz, 192 Ark. 950, 96 S.W.2d 459 (1936).

Ga.—Cherokee Brick & Tile Co. v. Redwine, 209 Ga. 691, 75 S.E.2d 550 (1953).

7 Minn.—Reserve Min. Co. v. State, 310 N.W.2d 487 (Minn. 1981).

8 Wash.—City of Tacoma v. Tax Com'n, 177 Wash. 604, 33 P.2d 899 (1934).

9 Minn.—Reserve Min. Co. v. State, 310 N.W.2d 487 (Minn. 1981).

Wash.—City of Tacoma v. Tax Com'n, 177 Wash. 604, 33 P.2d 899 (1934).

10 Wash.—City of Tacoma v. Tax Com'n, 177 Wash. 604, 33 P.2d 899 (1934).

11 U.S.—Matsuda v. City and County of Honolulu, 512 F.3d 1148 (9th Cir. 2008); Pure Wafer, Inc. v. City of Prescott, 14 F. Supp. 3d 1279 (D. Ariz. 2014).

12 U.S.—Russell & Co. v. People of Puerto Rico, 118 F.2d 225 (C.C.A. 1st Cir. 1941), judgment aff'd, 315 U.S. 610, 62 S. Ct. 784, 86 L. Ed. 1062 (1942).

W. Va.—Cole v. Pond Fork Oil & Gas Co., 127 W. Va. 762, 35 S.E.2d 25, 160 A.L.R. 970 (1945).

No avoidance of obligations of its contracts

The government cannot avoid the obligations of its contracts by using its taxing power to appropriate benefits that it has given up pursuant to contract.

U.S.—Centex Corp. v. U.S., 395 F.3d 1283 (Fed. Cir. 2005).

13 U.S.—Rorick v. Board of Com'rs of Everglades Drainage Dist., 57 F.2d 1048 (N.D. Fla. 1932).

Incidental impairment

A tax statute which only incidentally affects an obligation of a private contract previously entered into is not violative of the constitutional prohibition against impairing contractual obligations.

La.—Hibernia Mortg. Co. v. Greco, 191 La. 658, 186 So. 60 (1938).

14 Mo.—Bucklin Coal Mining Co. v. Unemployment Compensation Com'n, 356 Mo. 313, 201 S.W.2d 463 (1947).

Tex.—Preston v. Anderson County Levee Improvement Dist. No. 2, 261 S.W. 1077 (Tex. Civ. App. Texarkana 1924), writ refused, (Nov. 12, 1924).

15 Kan.—Board of Com'rs of Wyandotte County v. General Securities Corporation, 157 Kan. 64, 138 P.2d 479 (1943).

Pa.—Dole v. City of Philadelphia, 337 Pa. 375, 11 A.2d 163 (1940), opinion supplemented, 337 Pa. 375, 11 A.2d 767 (1939).

16 Ala.—Miller-Brent Lumber Co. v. State, 210 Ala. 30, 97 So. 97 (1923).

17 Wash.—Henry v. McKay, 164 Wash. 526, 3 P.2d 145, 77 A.L.R. 1025 (1931).

18 Ariz.—Baker v. Arizona Dept. of Revenue, 209 Ariz. 561, 105 P.3d 1180 (Ct. App. Div. 1 2005).

19 Ariz.—Baker v. Arizona Dept. of Revenue, 209 Ariz. 561, 105 P.3d 1180 (Ct. App. Div. 1 2005).

End of Document

16A C.J.S. Constitutional Law § 518

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

3. Modes of Exercising Power; Various Particular Powers

§ 518. Power of taxation—Inheritance or transfer taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2675

Succession or transfer taxes on interests which vest subsequent to the enactment of the statute imposing the tax are valid but invalid as to interests that vested prior to enactment.

In general, statutes imposing inheritance or transfer taxes, whether taxes on the privilege of receiving property or of transmitting it, are not unconstitutional as impairing the obligation of contracts.[1] However, since such taxes are not imposed on property, but on the right of succession or transmission, the Contract Clause prevents imposition of such taxes on interests which vested prior to enactment of the statute imposing the tax, even though the right of possession and enjoyment was postponed to a time thereafter, and although the interest was subject to be divested by the happening of a condition subsequent.[2]

On the other hand, the Contract Clause does not prohibit the imposition of inheritance or transfer taxes on interests that vest subsequent to enactment of the tax statute;[3] nor do they prevent the imposition of a tax on the right of possession and enjoyment accruing to the holder of a vested interest on the death of the holder of the estate preventing such possession and enjoyment.[4] Thus, a succession or inheritance tax levied on property given in trust with a power of revocation or alteration reserved in the donor, or in the donor and another not a beneficiary of the trust, is valid,[5] as is a tax imposed on property passing under insurance

contracts on the death of the insured,[6] unless by insurance contract executed prior to enactment of the tax statute, the right of the beneficiary was complete and indefeasible, the insured possessing no rights incidental to ownership or control of the policies.[7]

Change in corporate charter.

Where the charter of a corporation is expressly subject to repeal or change by the legislature, a charitable or educational corporation cannot contend that its charter contract has been unconstitutionally impaired because the legislature, subsequent to incorporation, increases the rate of tax to be paid on postmortem transfers to such corporations.[8]

Stock transfer tax.

Stock transfer tax statutes are not unconstitutional as impairing the obligation of contracts when applied to transfers of stock from trustees of a voting trust to the beneficial owners under a contract executed prior to the enactment of the statute.[9]

Footnotes

1 Mass.—Merchants Nat. Bank of Boston v. Merchants Nat. Bank of Boston, 318 Mass. 563, 62 N.E.2d 831 (1945).
Mont.—In re Kohrs' Estate, 122 Mont. 145, 199 P.2d 856, 5 A.L.R.2d 1046 (1948).
Ohio—In re Langenbach's Estate, 12 Ohio Misc. 262, 41 Ohio Op. 2d 384, 232 N.E.2d 831 (Prob. Ct. 1967).
Pa.—In re Stadtfeld's Estate, 359 Pa. 147, 58 A.2d 478 (1948).
Tenn.—Mitchell v. Carson, 186 Tenn. 228, 209 S.W.2d 20 (1948).

2 U.S.—Coolidge v. Long, 282 U.S. 582, 51 S. Ct. 306, 75 L. Ed. 562 (1931).

3 N.Y.—In re Arnold's Will, 36 Misc. 2d 695, 233 N.Y.S.2d 419 (Sur. Ct. 1962).
Okla.—In re Bass' Estate, 1947 OK 362, 200 Okla. 14, 190 P.2d 800 (1947).

4 R.I.—Manning v. Board of Tax Com'rs of Rhode Island, 46 R.I. 400, 127 A. 865 (1925).
Community property interest
The vesting of a wife's right of possession and enjoyment in community property of herself and her husband, arising on the death of her husband, may be taxed.
U.S.—Moffitt v. Kelly, 218 U.S. 400, 31 S. Ct. 79, 54 L. Ed. 1086 (1910).
N.Y.—In re Walk's Estate, 192 Misc. 237, 79 N.Y.S.2d 645 (Sur. Ct. 1948).
Tenancy by entirety
Realty held by a husband and wife as tenants by the entirety may be subjected to transfer tax on the death of either spouse by statute enacted after creation of the estate but prior to the spouse's death.
N.Y.—In re Weiden's Estate, 263 N.Y. 107, 188 N.E. 270 (1933).

5 U.S.—Bullen v. State of Wisconsin, 240 U.S. 625, 36 S. Ct. 473, 60 L. Ed. 830 (1916).
Mass.—Merchants Nat. Bank of Boston v. Merchants Nat. Bank of Boston, 318 Mass. 563, 62 N.E.2d 831 (1945).

6 N.Y.—In re Scott's Estate, 158 Misc. 481, 286 N.Y.S. 138 (Sur. Ct. 1936), order aff'd, 249 A.D. 542, 293 N.Y.S. 126 (1st Dep't 1937), order aff'd, 274 N.Y. 538, 10 N.E.2d 538 (1937).

7 Wash.—In re McGrath's Estate, 191 Wash. 496, 71 P.2d 395 (1937).

8 Md.—Washington County Free Library v. Mealey's Estate, 121 Md. 274, 88 A. 140 (1913).

9 N.Y.—Chicago Great Western R. Co. v. State, 197 A.D. 742, 189 N.Y.S. 457 (3d Dep't 1921), aff'd, 233 N.Y. 661, 135 N.E. 960 (1922).

16A C.J.S. Constitutional Law § 519

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

A. Power of States

3. Modes of Exercising Power; Various Particular Powers

§ 519. Power of taxation—Exemptions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2719

A state or one of its municipal subdivisions may, by contract, exempt property rights or franchises from taxation, and subsequent legislation which impairs the obligation of such contract is void.

A legislative grant of tax exemptions, if containing the essential elements of a contract, is a contract within the purview of the Contract Clause of United States Constitution and of similar provisions in state constitutions.[1] A state,[2] or one of its municipal subdivisions,[3] may, by contract, for a consideration, exempt from taxation, either wholly or partially, property, rights, or franchises otherwise taxable under the general laws.[4] Furthermore, the State is, to the extent of the exemption granted by the contract, shorn of its power to tax, and subsequent legislation, either statutory or constitutional, attempting to exercise the power of taxation in violation of the contract is void.[5]

However, the contract of exemption must be clear and unambiguous,[6] and where the exemption is by a subdivision of the state, the power to exempt must be clear.[7] In determining whether there is a valid contract and whether by its terms an exemption from taxation is granted, contracts claimed to provide for tax exemption must receive a strict construction;[8] all doubts and

ambiguities must be resolved in favor of the taxing power,[9] and every presumption will be indulged in favor of the State's power to tax and against the existence of the exemption.[10]

Contracts of exemption from property taxes do not exempt from taxes in the nature of excise taxes.[11] Thus, property exempt from taxation under a valid contract is nevertheless subject to an inheritance or succession tax, which is not a tax on the property, but on its transfer;[12] and a tax exemption of state or municipal bonds which applies only to a general property tax does not prevent the enactment of a statute subsequent to the issuance of the bonds which taxes the income therefrom.[13]

Federal, state, and municipal bonds.

Under statutes expressly providing therefor, federal, state, and municipal bonds are exempt from taxation as to both principal and interest.[14]

Footnotes

1 U.S.—In re Old Carco LLC, 452 B.R. 100 (Bankr. S.D. N.Y. 2011).

2 Mass.—Opinion of the Justices, 365 Mass. 665, 313 N.E.2d 882 (1974).
Mo.—Washington University v. Baumann, 341 Mo. 708, 108 S.W.2d 403 (1937).
N.Y.—People v. Brooklyn Garden Apartments, 283 N.Y. 373, 28 N.E.2d 877 (1940).
Burden of proof
Exemption from taxation is within the state's sovereign power, and one invoking the Contract Clause of the Federal Constitution to defeat such exemption carries the burden of showing conclusively that he has a contract right impaired by the exemption.
Fla.—American Can Co. v. City of Tampa, 152 Fla. 798, 14 So. 2d 203 (1943).

3 U.S.—City and County of Denver v. Stenger, 295 F. 809 (C.C.A. 8th Cir. 1924).
Ga.—City Council of Augusta v. Augusta-Aiken Ry. & Electric Corporation, 150 Ga. 529, 104 S.E. 503 (1920).
N.Y.—City of Yonkers v. Yonkers R. Co., 169 Misc. 102, 6 N.Y.S.2d 519 (Sup 1938), judgment aff'd, 257 A.D. 964, 13 N.Y.S.2d 957 (2d Dep't 1939), judgment aff'd, 282 N.Y. 783, 27 N.E.2d 200 (1940).

4 Ill.—Illinois Cent. R. Co. v. Emmerson, 299 Ill. 328, 132 N.E. 471 (1921).
Limited to reasonable time
Binding contracts of tax exemption are valid only if limited to a reasonable period of time.
Mass.—Opinion of the Justices, 365 Mass. 665, 313 N.E.2d 882 (1974).
Special and general exemptions distinguished
A general exemption is law, part of state policy of taxation, an exercise of the power of classification, and it may be changed at any time; a special exemption is a gratuity or a contract made by authority of law, a favor granted to a particular party, and if it contains the essentials of contract, it cannot be impaired.
Mo.—Curators of Central College v. Rose, 182 S.W.2d 145 (Mo. 1944).
N.H.—Eyers Woolen Co. v. Town of Gilsum, 84 N.H. 1, 146 A. 511, 64 A.L.R. 1196 (1929).
N.Y.—Bronx Garment Center v. City of New York, Dept. of Finance, Bureau of City Collections, 199 Misc. 513, 106 N.Y.S.2d 720 (Sup 1951), order aff'd, 279 A.D. 1048, 113 N.Y.S.2d 257 (1st Dep't 1952).

5 U.S.—Georgia R. R. & Banking Co. v. Redwine, 122 F. Supp. 93 (N.D. Ga. 1952).
Ga.—Thompson v. Atlantic Coast Line R. Co., 200 Ga. 856, 38 S.E.2d 774 (1946), judgment aff'd, 332 U.S. 168, 67 S. Ct. 1584, 91 L. Ed. 1977, 173 A.L.R. 1 (1947).
La.—Hilton Hotels Corp. v. Jefferson Parish, 258 La. 709, 247 So. 2d 843 (1971).
Ohio—New Orphans' Asylum of Colored Children of Cincinnati v. Board of Tax Appeals, 150 Ohio St. 219, 37 Ohio Op. 470, 80 N.E.2d 761 (1948).

6 U.S.—New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938).

7 U.S.—New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938).
Ky.—Board of Ed. of Fayette County v. Board of Ed. of Lexington Independent School Dist., 250 S.W.2d 1017 (Ky. 1952).

8 U.S.—J. D. Adams Mfg. Co. v. Storen, 304 U.S. 307, 58 S. Ct. 913, 82 L. Ed. 1365, 117 A.L.R. 429 (1938).

9 Mo.—Curators of Central College v. Rose, 182 S.W.2d 145 (Mo. 1944).
N.Y.—People ex rel. Central Union Trust Co. of New York v. Wendell, 197 A.D. 131, 188 N.Y.S. 344 (3d Dep't 1921), aff'd, 231 N.Y. 629, 132 N.E. 916 (1921).

10 Iowa—Hale v. Iowa State Bd. of Assessment and Review, 223 Iowa 321, 271 N.W. 168 (1937), judgment aff'd, 302 U.S. 95, 58 S. Ct. 102, 82 L. Ed. 72 (1937).
N.Y.—Board of Ed. of Central School Dist. No. 1, Town of Somers, Westchester County, v. Stoddard, 49 N.Y.S.2d 38 (Sup 1944), order aff'd, 268 A.D. 936, 51 N.Y.S.2d 269 (3d Dep't 1944), order aff'd, 294 N.Y. 667, 60 N.E.2d 757 (1945).
Pa.—Com. v. Western Maryland R. Co., 63 Dauph. 153 (Pa. C.P. 1952), aff'd, 377 Pa. 312, 105 A.2d 336 (1954).
Wash.—City of Tacoma v. Tax Com'n, 177 Wash. 604, 33 P.2d 899 (1934).

11 U.S.—Hale v. Iowa State Board of Assessment and Review, 302 U.S. 95, 58 S. Ct. 102, 82 L. Ed. 72 (1937).

12 U.S.—Orr v. Gilman, 183 U.S. 278, 22 S. Ct. 213, 46 L. Ed. 196 (1902).
As to inheritance or succession tax, see § 518.
United States bonds
Inheritance tax imposed on succession to bonds of the United States which are exempt from taxes does not impair an obligation of a contract or the borrowing power of the United States government.
Va.—Cornett's Ex'rs v. Commonwealth, 127 Va. 640, 105 S.E. 230 (1920).

13 U.S.—J. D. Adams Mfg. Co. v. Storen, 304 U.S. 307, 58 S. Ct. 913, 82 L. Ed. 1365, 117 A.L.R. 429 (1938).
Iowa—Hale v. Iowa State Bd. of Assessment and Review, 223 Iowa 321, 271 N.W. 168 (1937), judgment aff'd, 302 U.S. 95, 58 S. Ct. 102, 82 L. Ed. 72 (1937).

14 Ala.—Newberry v. City of Andalusia, 257 Ala. 49, 57 So. 2d 629 (1952).
Tenn.—National Life & Acc. Ins. Co. v. Dempster, 168 Tenn. 446, 79 S.W.2d 564 (1935).

End of Document

16A C.J.S. Constitutional Law II VI B Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
West's A.L.R. Digest, Constitutional Law 2660 to 2675, 2680, 2681, 2683, 2685 to 2692, 2695 to 2701, 2703, 2704, 2705, 2706 to 2708, 2710 to 2712, 2714 to 2716, 2718 to 2720, 2722 to 2726

End of Document

16A C.J.S. Constitutional Law § 520

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

1. Contracts to Which State is a Party

§ 520. State contracts as within prohibition, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2669, 2680, 2681, 2685, 2688, 2689, 2695 to 2699, 2701, 2703, 2712

Contracts to which a state is a party are within the constitutional prohibition against the impairment of the obligation of contracts.

A contract to which a state, or a subdivision thereof, is a party is as much within the constitutional prohibition of statutes impairing the obligation of contracts as a contract between individuals,[1] particularly with respect to contracts previously entered into by the state in its proprietary capacity.[2] Both state and federal Contract Clauses limit the power of a state to modify its own contracts.[3] Compacts between states,[4] between states and Indian tribes,[5] or between states and the United States[6] are contracts protected by the Constitution of the United States.

A state's impairment of its own contracts is subject to more stringent review under the Contract Clause than impairment of contracts between private persons.[7] Courts do not give the legislature the same deference they would give it if it were acting on a subject at arm's length.[8] Where the state is a party to a contractual obligation, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the state's self-interest is at stake.[9] To be reasonable and necessary under

a less deference scrutiny, when evaluating a claim under the Contract Clause, it must be shown that the State did not (1) consider impairing the contracts on par with other policy alternatives[10] or (2) impose a drastic impairment when an evident and more moderate course would serve its purpose equally well,[11] nor (3) act unreasonably in light of the surrounding circumstances.[12] Some factors to be considered under this inquiry include whether the act was an emergency measure, was one to protect a basic societal interest rather than particular individuals, was tailored appropriately to its purpose, imposed reasonable conditions, and was limited to the duration of the emergency.[13] Although a state action impairing its own contracts is viewed less deferentially compared to a state action impairing private contracts, less deference does not imply no deference. This maxim is particularly true in the Contract Clause context because the heightened deference afforded to private contractual impairments is quite substantial.[14]

If, however, the legislation has been enacted pursuant to the state's reserved police powers, rather than its taxing and spending powers, traditional standards of deference to the legislature's judgment in economic and social matters must be observed.[15] Even a substantial impairment of a public contract may be constitutional if it is necessary to serve a legitimate public purpose.[16] The public purpose requirement is primarily designed to prevent a state from embarking on a policy motivated by a simple desire to escape its financial obligations or to injure others through the repudiation of debts or the destruction of contracts or the denial of means to enforce them.[17] In the Contract Clause analysis, a district court may weigh five factors in determining whether a sufficient public purpose exists for a state law impairing a contractual obligation: (1) whether there is an emergency nature with respect to the legislation, (2) whether the State had previously regulated the subject activity, (3) whether the impact is generalized or specifically directed toward a narrow class, (4) whether the reliance on preexisting rights was both actual and reasonable, and (5) whether the challenged law worked a severe, permanent, and immediate change in those relationships reasonably relied upon.[18] In weighing whether reliance on preexisting contractual rights was both actual and reasonable, to determine whether a sufficient public purpose exists for a state law impairing a contractual obligation, "reliance" on contractual terms is established when it appears that the parties contemplated their respective positions, bargained for the projected benefits, and relied upon the binding nature of the resulting contract, and there is no evidence that the agreement was speculative or unsettled.[19]

The constitutional prohibition of impairment of contract was not intended to restrain the states in the regulation of their civil institutions, adopted for internal government,[20] or to disable the legislature from altering the political structure of the government.[21] Moreover, the Contract Clause does not require a state to adhere to a contract that surrenders an essential attribute of its sovereignty.[22]

A contract is not impaired by the occurrence of the very event contemplated thereby.[23] Mere authority to test disputed rights by suit does not constitute impairment of the obligation of contracts.[24]

CUMULATIVE SUPPLEMENT

Cases:

Where plaintiffs allege that Puerto Rico impaired a public contract for its own benefit, in violation of the Contracts Clause, Puerto Rico's otherwise broad discretion to determine whether an impairment of a private contract is reasonable or necessary is more constrained than it ordinarily would be. U.S. Const. art. 1, § 10, cl. 1. In re Financial Oversight and Management Board for Puerto Rico, 979 F.3d 10 (1st Cir. 2020).

While state is typically granted degree of deference as to what is reasonable and necessary when legislation impairs purely private contracts when determining whether legislation violates Contracts Clause, complete deference to legislative assessment of reasonableness and necessity is not appropriate where public contracts are at issue because state's self-interest is at stake.

U.S.C.A. Const. Art. 1, § 10, cl. 1. North Carolina Ass'n of Educators, Inc. v. State, 776 S.E.2d 1, 321 Ed. Law Rep. 538 (N.C. Ct. App. 2015), review allowed, 775 S.E.2d 831 (N.C. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 58 S. Ct. 443, 82 L. Ed. 685, 113 A.L.R. 1482 (1938); Hoffman v. City of Warwick, 909 F.2d 608 (1st Cir. 1990); National Educ. Association-Rhode Island by Scigulinsky v. Retirement Bd. of Rhode Island Employees' Retirement System, 890 F. Supp. 1143, 102 Ed. Law Rep. 96 (D.R.I. 1995); In re City of Detroit, Mich., 504 B.R. 97 (Bankr. E.D. Mich. 2013).

Cal.—Deputy Sheriffs' Association of San Diego County v. County of San Diego, 233 Cal. App. 4th 573, 182 Cal. Rptr. 3d 759 (4th Dist. 2015), review denied, (Apr. 1, 2015).

Or.—Stovall v. State By and Through Oregon Dept. of Transp., 324 Or. 92, 922 P.2d 646 (1996).

State prescribing conditions

The State may make a contract that certain conditions stated shall continue in force for a definite period of time without interference on the part of the state and by such contract, the State abdicates and relinquishes its power to prescribe conditions or to regulate practices so far as the other party to the contract is concerned.

Ind.—Bruck v. State ex rel. Money, 228 Ind. 189, 91 N.E.2d 349 (1950).

2 N.Y.—Van Curler Development Corp. v. City of Schenectady, 59 Misc. 2d 621, 300 N.Y.S.2d 765 (Sup 1969).

N.C.—Oglesby v. McCoy, 41 N.C. App. 735, 255 S.E.2d 773 (1979).

Wis.—Dairyland Greyhound Park, Inc. v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408 (2006).

3 Wis.—Wisconsin Professional Police Ass'n, Inc. v. Lightbourn, 2001 WI 59, 243 Wis. 2d 512, 627 N.W.2d 807 (2001).

4 U.S.—Covington & C. Bridge Co. v. Commonwealth of Kentucky, 154 U.S. 204, 14 S. Ct. 1087, 38 L. Ed. 962 (1894).

5 Wis.—Dairyland Greyhound Park, Inc. v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408 (2006).

6 Md.—U.S., to Use of Washington Acqueduct v. Great Falls Mfg. Co., 21 Md. 119, 1864 WL 1594 (1864).

Mich.—Fenn v. Kinsey, 45 Mich. 446, 8 N.W. 64 (1881).

7 U.S.—Fraternal Order of Police Lodge No. 89 v. Prince George's County, MD, 608 F.3d 183 (4th Cir. 2010); Southern California Gas Co. v. City of Santa Ana, 336 F.3d 885 (9th Cir. 2003); California Hosp. Ass'n v. Maxwell-Jolly, 776 F. Supp. 2d 1129 (E.D. Cal. 2011); U.S. v. Manning, 434 F. Supp. 2d 988 (E.D. Wash. 2006), aff'd, 527 F.3d 828 (9th Cir. 2008).

Cal.—Board of Administration v. Wilson, 52 Cal. App. 4th 1109, 61 Cal. Rptr. 2d 207 (3d Dist. 1997).

Wash.—Washington Educ. Ass'n v. Washington Dept. of Retirement Systems, 181 Wash. 2d 233, 332 P.3d 439 (2014).

8 U.S.—Parella v. Retirement Bd. of Rhode Island Employees' Retirement System, 173 F.3d 46 (1st Cir. 1999).

Wis.—Wisconsin Professional Police Ass'n, Inc. v. Lightbourn, 2001 WI 59, 243 Wis. 2d 512, 627 N.W.2d 807 (2001).

9 U.S.—Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006); New Jersey Retail Merchants Ass'n v. Sidamon-Eristoff, 669 F.3d 374 (3d Cir. 2012); United Healthcare Ins. Co. v. Davis, 602 F.3d 618 (5th Cir. 2010).

N.J.—Berg v. Christie, 436 N.J. Super. 220, 93 A.3d 387 (App. Div. 2014).

N.C.—Miracle v. North Carolina Local Government Employees Retirement System, 124 N.C. App. 285, 477 S.E.2d 204 (1996).

Ohio—Bass Energy Inc. v. Highland Hts., 193 Ohio App. 3d 725, 2010-Ohio-2102, 954 N.E.2d 130 (8th Dist. Cuyahoga County 2010).

"Self-interest"

"Self-interest" refers to the State's interest as a party to the contract rather than to its interests as a sovereign seeking to further important public policies.

S.C.—Ken Moorhead Oil Co., Inc. v. Federated Mut. Ins. Co., 323 S.C. 532, 476 S.E.2d 481 (1996).

No benefit to state's self-interest

In a mining company's Contract Clause claim against the state concerning mineral leases, a heightened level of scrutiny would not be applied to determine whether the application of a voter initiative prohibiting open-pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents to the company's leases was reasonably related to achieving a legitimate and public purpose though the State was a party to the leases; the initiative, which was created and passed by the voters of the state, did not act to benefit the State's self-interest, and the State's interests as a contracting entity were actually diminished by the initiative's passage.

Mont.—Seven Up Pete Venture v. State, 2005 MT 146, 327 Mont. 306, 114 P.3d 1009 (2005).

10 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006); Mascio v. Public Employees Retirement System of Ohio, 160 F.3d 310, 1998 FED App. 0328P (6th Cir. 1998); Brown v. New York, 975 F. Supp. 2d 209 (N.D. N.Y. 2013).

Fla.—Scott v. Williams, 107 So. 3d 379 (Fla. 2013).

Mich.—AFT Michigan v. State, 297 Mich. App. 597, 825 N.W.2d 595, 289 Ed. Law Rep. 336 (2012).

N.Y.—Cliff v. Blydenberg, 173 Misc. 2d 366, 661 N.Y.S.2d 736 (Sup 1997).

11 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006); City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014); University of Hawai'i Professional Assembly v. Cayetano, 183 F.3d 1096, 137 Ed. Law Rep. 77 (9th Cir. 1999); New York State Correctional Officers & Police Benev. Ass'n, Inc. v. New York, 911 F. Supp. 2d 111 (N.D. N.Y. 2012).

Fla.—Scott v. Williams, 107 So. 3d 379 (Fla. 2013).

Mich.—AFT Michigan v. State, 297 Mich. App. 597, 825 N.W.2d 595, 289 Ed. Law Rep. 336 (2012).

N.J.—Berg v. Christie, 436 N.J. Super. 220, 93 A.3d 387 (App. Div. 2014).

Other policy alternatives available

Although less deference does not imply no deference to the legislature's determination of reasonableness and necessity, when a statute is challenged under the Contract Clauses of the federal and state constitutions, the Contract Clauses, if they are to mean anything, must prohibit the state from dishonoring its existing contractual obligations when other policy alternatives are available.

N.H.—Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Association, 159 N.H. 627, 992 A.2d 624 (2010).

12 U.S.—Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006); City of Pontiac Retired Employees Ass'n v. Schimmel, 751 F.3d 427 (6th Cir. 2014); Brown v. New York, 975 F. Supp. 2d 209 (N.D. N.Y. 2013).

Mich.—AFT Michigan v. State, 297 Mich. App. 597, 825 N.W.2d 595, 289 Ed. Law Rep. 336 (2012).

13 U.S.—Brown v. New York, 975 F. Supp. 2d 209 (N.D. N.Y. 2013).

S.C.—Harleysville Mut. Ins. Co. v. State, 401 S.C. 15, 736 S.E.2d 651 (2012).

14 U.S.—United Auto., Aerospace, Agr. Implement Workers of America Intern. Union v. Fortuño, 633 F.3d 37 (1st Cir. 2011).

15 Cal.—Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach, 86 Cal. App. 4th 534, 103 Cal. Rptr. 2d 447 (2d Dist. 2001).

16 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).

Mont.—City of Billings v. County Water Dist. of Billings Heights, 281 Mont. 219, 935 P.2d 246 (1997).

Wash.—Vine Street Commercial Partnership v. City of Marysville, 98 Wash. App. 541, 989 P.2d 1238 (Div. 1 1999).

Wis.—Wisconsin Professional Police Ass'n, Inc. v. Lightbourn, 2001 WI 59, 243 Wis. 2d 512, 627 N.W.2d 807 (2001).

17 La.—Segura v. Frank, 630 So. 2d 714 (La. 1994).

18 U.S.—Cycle Barn, Inc. v. Arctic Cat Sales Inc., 701 F. Supp. 2d 1197 (W.D. Wash. 2010).

19 U.S.—Cycle Barn, Inc. v. Arctic Cat Sales Inc., 701 F. Supp. 2d 1197 (W.D. Wash. 2010).

20 Ala.—Hard v. State ex rel. Baker, 228 Ala. 517, 154 So. 77 (1934).

School board

A school board, as an agency of the state and subject to the legislature's broad and pervasive power to regulate public education, is not protected by the constitutional prohibition against the legislature enacting laws which impair the obligation of contracts.

La.—Rousselle v. Plaquemines Parish School Bd., 633 So. 2d 1235, 90 Ed. Law Rep. 519 (La. 1994).

Strike

An act prohibiting a strike by certain public employees is not unconstitutional as impairing contractual rights possessed by the employees.

Mich.—City of Detroit v. Division 26 of Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees of America, 332 Mich. 237, 51 N.W.2d 228 (1952).

Challenge by state agency disallowed

Tenn.—Metropolitan Development and Housing Agency v. South Central Bell Tel. Co., 562 S.W.2d 438 (Tenn. Ct. App. 1977).

21 N.J.—Fidelity Union Trust Co. v. New Jersey Highway Authority, 85 N.J. 277, 426 A.2d 488 (1981).

22 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977); RUI One Corp. v. City of Berkeley, 371 F.3d 1137 (9th Cir. 2004).

Cal.—Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach, 86 Cal. App. 4th 534, 103 Cal. Rptr. 2d 447 (2d Dist. 2001).

Kan.—Young Partners, LLC v. Board of Educ., Unified School Dist. No. 214, Grant County, 284 Kan. 397, 160 P.3d 830, 220 Ed. Law Rep. 912 (2007).

23 Ill.—Commonwealth Edison Co. v. Illinois Commerce Com'n, 398 Ill. App. 3d 510, 338 Ill. Dec. 539, 924 N.E.2d 1065 (2d Dist. 2009).

N.M.—National Bldg. v. State Bd. of Ed., 1973-NMSC-053, 85 N.M. 186, 510 P.2d 510 (1973).

Prevailing wage rate

A contract between the state and a contractor was not unconstitutionally impaired by a required increase in wages as a result of an increase in the prevailing rate of wage in the locality as the contractor undertook to pay the prevailing increased wage rate without reimbursement from the state when he entered into a contract with such a provision.

N.Y.—Meaott Const. Corp. v. Ross, 76 A.D.2d 137, 431 N.Y.S.2d 207 (3d Dep't 1980).

24 U.S.—Western Union Telegraph Co. v. State of Georgia, 269 U.S. 67, 46 S. Ct. 36, 70 L. Ed. 166 (1925).

End of Document

16A C.J.S. Constitutional Law § 521

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

1. Contracts to Which State is a Party

§ 521. Existence of contract as preliminary element and requirement

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2685, 2686, 2689

A contract to which the State is a party and giving rise to contractual obligations binding on the State must first exist before it can be said that a state law impairs such obligations within the meaning of state and federal constitutional provisions.

A contract to which the State is a party and giving rise to contractual obligations binding on the State must first exist before it can be said that a state law impairs such obligations within the meaning of state and federal constitutional provisions.[1] A contractual relationship with the state may arise from a constitutional provision[2] or amendment,[3] or a statute,[4] and the rights created thereby cannot be impaired by subsequent legislation.[5]

The Contract Clause is applicable to contracts entered into by the state, but typically, state statutory enactments do not of their own force create a contract with those whom the statute benefits.[6] A state legislative enactment may be deemed a contract for purposes of the Contract Clause only if there is a clear indication that the legislature has intended to bind itself in a contractual manner.[7] Absent a clearly stated intention to do so, statutes do not create contractual rights that bind future legislatures.[8]

Courts have coined the phrase "unmistakability doctrine" for this legal principle.[9] The intention of the legislature to create contractual obligations must clearly and unmistakably appear,[10] and a statutory contract will not be inferred in the absence of an unambiguous legislative expression of intent to create a contract.[11] Absent an adequate expression of an actual intent of the State to bind itself, the court will not lightly construe that which is undoubtedly a scheme of public regulation to be, in addition, a private contract to which the State is a party.[12] The presumption is that a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature ordains otherwise.[13] The court will resolve any uncertainty in favor of finding no contract.[14]

Federal or state question.

Some courts hold that federal law controls whether state statutes create contractual rights protected by the Contract Clause of the Federal Constitution.[15] Others hold that in determining whether legislation creates a contract for purposes of Contract Clause analysis, the law of the state in which the legislation was enacted is determinative.[16]

Footnotes

1 U.S.—Crane v. Hahlo, 258 U.S. 142, 42 S. Ct. 214, 66 L. Ed. 514 (1922); RUI One Corp. v. City of Berkeley, 371 F.3d 1137 (9th Cir. 2004).
Mo.—Missouri Dental Bd. v. Alexander, 628 S.W.2d 646 (Mo. 1982).
Neb.—Halpin v. Nebraska State Patrolmen's Retirement System, 211 Neb. 892, 320 N.W.2d 910 (1982).
N.J.—New Jersey Ass'n of Ticket Brokers v. Ticketron, 226 N.J. Super. 155, 543 A.2d 997 (App. Div. 1988).
Or.—Strunk v. Public Employees Retirement Bd., 338 Or. 145, 108 P.3d 1058 (2005).

2 **Based on ordinance of constitutional convention**
W. Va.—State v. Gray, 132 W. Va. 472, 52 S.E.2d 759 (1949) (overruled in part on other grounds by, State v. Simmons, 135 W. Va. 196, 64 S.E.2d 503 (1951)).

3 Minn.—Reserve Min. Co. v. State, 310 N.W.2d 487 (Minn. 1981).

4 U.S.—Young v. Hawaii, 911 F. Supp. 2d 972 (D. Haw. 2012).
Or.—Strunk v. Public Employees Retirement Bd., 338 Or. 145, 108 P.3d 1058 (2005), called into doubt on other grounds by Friends of Columbia Gorge, Inc. v. Columbia River Gorge Com'n, 215 Or. App 557, 171 P3d 942 (2007).

5 U.S.—American Federation of State, County and Municipal Employees, Local 380 v. Hot Spring County, Arkansas, 362 F. Supp. 2d 1035 (W.D. Ark. 2004).
Ga.—DeClue v. City of Clayton, 246 Ga. App. 487, 540 S.E.2d 675 (2000).

6 U.S.—United Auto., Aerospace, Agricultural Implement Workers of America Intern. Union v. Fortuno, 645 F. Supp. 2d 56 (D.P.R. 2009).
Ariz.—Baker v. Arizona Dept. of Revenue, 209 Ariz. 561, 105 P.3d 1180 (Ct. App. Div. 1 2005).
Colo.—Justus v. State, 2014 CO 75, 336 P.3d 202 (Colo. 2014).
S.C.—Anonymous Taxpayer v. South Carolina Dept. of Revenue, 377 S.C. 425, 661 S.E.2d 73 (2008).

7 U.S.—San Diego Police Officers' Ass'n v. San Diego City Employees' Retirement System, 568 F.3d 725 (9th Cir. 2009); Doe v. Nebraska, 734 F. Supp. 2d 882 (D. Neb. 2010).
Minn.—Meriwether Minnesota Land & Timber, LLC v. State, 818 N.W.2d 557 (Minn. Ct. App. 2012).
Ohio—State ex rel. Horvath v. State Teachers Retirement Bd., 83 Ohio St. 3d 67, 1998-Ohio-424, 697 N.E.2d 644, 127 Ed. Law Rep. 1017 (1998).
Or.—Weyerhaeuser Co. v. Ellison, 208 Or. App. 612, 145 P.3d 309 (2006).
Statutory program not open offer to contract
The discontinuation of a longevity bonus program, which provided financial incentives to senior citizens for continuing to live in the state, did not violate the Contract Clause of the Federal Constitution; the statutory program was not an open offer to contract and thus did not implicate the Contract Clause.

Alaska—Simpson v. Murkowski, 129 P.3d 435 (Alaska 2006).

Abrogation

The state legislature's intent to create private contractual rights must be unmistakably clear; even when contractual rights do exist, the legislature may abrogate them under certain circumstances.

U.S.—United Auto., Aerospace, Agricultural Implement Workers of America Intern. Union v. Fortuno, 645 F. Supp. 2d 56 (D.P.R. 2009).

8 U.S.—Rhode Island Council 94 v. Rhode Island, 705 F. Supp. 2d 165 (D.R.I. 2010).

Ariz.—Baker v. Arizona Dept. of Revenue, 209 Ariz. 561, 105 P.3d 1180 (Ct. App. Div. 1 2005).

Ohio—State ex rel. Horvath v. State Teachers Retirement Bd., 83 Ohio St. 3d 67, 1998-Ohio-424, 697 N.E.2d 644, 127 Ed. Law Rep. 1017 (1998).

9 U.S.—Parker v. Wakelin, 123 F.3d 1, 120 Ed. Law Rep. 966 (1st Cir. 1997).

Ohio—State ex rel. Horvath v. State Teachers Retirement Bd., 83 Ohio St. 3d 67, 1998-Ohio-424, 697 N.E.2d 644, 127 Ed. Law Rep. 1017 (1998).

Canon of construction

The unmistakability doctrine is a canon of construction rooted in the belief that legislatures should not bind future legislatures from employing their sovereign powers in the absence of the clearest of intent to create vested rights protected under the Contract Clause.

Wis.—Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).

10 U.S.—Parella v. Retirement Bd. of Rhode Island Employees' Retirement System, 173 F.3d 46 (1st Cir. 1999).

N.H.—American Federation of Teachers v. State, 2015 WL 222181 (N.H. 2015).

Or.—Strunk v. Public Employees Retirement Bd., 338 Or. 145, 108 P.3d 1058 (2005).

Purpose

The requirement under the unmistakability doctrine pursuant to the Contract Clause that the government's obligation unmistakably appear serves the dual purposes of limiting contractual incursions on a state's sovereign powers and of avoiding difficult constitutional questions about the extent of state authority to limit the subsequent exercise of legislative power.

Wis.—Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).

Determination by court

The "unmistakability doctrine" mandates that court determine whether a legislative enactment challenged by a Contract Clause claim evinces the clear intent of the state to be bound to particular contractual obligations; when reviewing a particular enactment, therefore, court must suspend judgment and proceed cautiously both in identifying a contract within the language of a regulatory statute and in defining the contours of any contractual obligation.

N.H.—Professional Fire Fighters of New Hampshire v. State, 167 N.H. 188, 107 A.3d 1229 (2014).

11 U.S.—McGrath v. Rhode Island Retirement Bd. By and Through Mayer, 906 F. Supp. 749 (D.R.I. 1995), judgment aff'd, 88 F.3d 12 (1st Cir. 1996).

Or.—Does 1, 2, 3, 4, 5, 6, and 7 v. State, 164 Or. App. 543, 993 P.2d 822, 103 A.L.R.5th 661 (1999).

Statutory language

For Contract Clause purposes, statutory language, standing alone, may demonstrate intent to create private contractual rights if it expressly authorizes contract or states that benefits are contractual or if it expressly bars future amendments that would reduce benefits already granted.

U.S.—Puckett v. Lexington-Fayette Urban County Government, 2014 WL 5093420 (E.D. Ky. 2014).

Bar of future amendments

For purposes of a Contract Clause claim that the contractual relationship arises out of a statute, unmistakable intent to contract may be found based on language that expressly bars future amendments that would reduce benefits already granted or other circumstances that may be drawn from legislative history.

U.S.—Maine Ass'n of Retirees v. Board of Trustees of Maine Public Employees Retirement System, 954 F. Supp. 2d 38 (D. Me. 2013), aff'd, 758 F.3d 23, 307 Ed. Law Rep. 617 (1st Cir. 2014).

12 U.S.—National R.R. Passenger Corp. v. Atchison Topeka and Santa Fe Ry. Co., 470 U.S. 451, 105 S. Ct. 1441, 84 L. Ed. 2d 432 (1985).

13 U.S.—Parella v. Retirement Bd. of Rhode Island Employees' Retirement System, 173 F.3d 46 (1st Cir. 1999); Hawkeye Commodity Promotions, Inc. v. Miller, 432 F. Supp. 2d 822 (N.D. Iowa 2006), judgment aff'd, 486 F.3d 430 (8th Cir. 2007); Doe v. Nebraska, 734 F. Supp. 2d 882 (D. Neb. 2010).

Minn.—Meriwether Minnesota Land & Timber, LLC v. State, 818 N.W.2d 557 (Minn. Ct. App. 2012).

N.H.—American Federation of Teachers v. State, 2015 WL 222181 (N.H. 2015).

N.Y.—Empire Gen Holdings, Inc. v. Governor of State, 40 Misc. 3d 984, 967 N.Y.S.2d 919 (Sup 2013).

Well-established presumption

When analyzing whether the government contracted by statute, for purposes of the Contract Clauses of the state and federal constitutions, it is presumed that the legislature did not intend to bind itself contractually and that the legislation was not intended to create a contractual right unless there is a clear indication of the legislature's intent to be bound; this well-established presumption is grounded in the elementary proposition that the principal function of a legislature is not to make contracts but to make laws that establish the policy of the state.

Colo.—Justus v. State, 2014 CO 75, 336 P.3d 202 (Colo. 2014).

14 N.M.—Pierce v. State, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288 (1995).

15 U.S.—Robertson v. Kulongoski, 466 F.3d 1114 (9th Cir. 2006).

16 U.S.—Andrews v. Anne Arundel County, Md., 931 F. Supp. 1255 (D. Md. 1996), aff'd, 114 F.3d 1175 (4th Cir. 1997).

End of Document

16A C.J.S. Constitutional Law § 522

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

1. Contracts to Which State is a Party

§ 522. Impairment and breach distinguished

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2687, 2689

The constitutional prohibition against the impairment of contracts does not apply to a suit for damages arising from a breach of contract by a state or one of its subdivisions or agencies.

The Contract Clause of the United States Constitution, on its face, only applies to a state's passage of a law impairing contractual obligations[1] and does not apply to a suit for damages arising from a breach of contract by a state or one of its subdivisions or agencies.[2]

The State does not impair the obligation of contracts, in violation of the Contract Clause, merely by breaching one of its contracts or by otherwise modifying a contractual obligation.[3] A simple breach of contract by a governmental entity does not impair the obligation of the breached contract in violation of the Contract Clause.[4] The State, like any private party, must be able to breach contracts without turning every breach into a constitutional violation.[5] The Contract Clause does not bar the State from merely breaching a contract, which is the prerogative of any private party, subject to liability for breach.[6] Thus, it is necessary to distinguish between legislative action that merely breaches the contract and legislative action that impairs it, for only the

latter is constitutionally cognizable.[7] The State does not unconstitutionally impair a contract to which it is a party if its action leaves the promisee with a remedy for breach of contract.[8] The line between mere breach of a contract and unconstitutional impairment of a contract is crossed where the state or local government action forecloses the possibility of damages or an equivalent remedy.[9] An "impairment" occurs, so as to implicate the Contract Clause, when the law prohibits performance of an obligation and extinguishes available remedies for nonperformance.[10]

General principles of contract law normally will govern the determination whether there has been a violation of the state constitutional prohibition against impairment of contract even where the State is alleged to be a party to the contract at issue.[11]

Footnotes

1 U.S.—Dixon v. Pennsylvania Crime Commission, 67 F.R.D. 425 (M.D. Pa. 1975).
Proscription
The Contract Clause proscribes legislation that impairs contractual obligations as opposed to contractual breaches.
U.S.—American Federation of Government Employees, Local 2741 v. District of Columbia, 689 F. Supp. 2d 30 (D.D.C. 2009).

2 U.S.—Contemporary Music Group, Inc. v. Chicago Park Dist., 343 F. Supp. 505 (N.D. Ill. 1972).
Mich.—Michigan Oil Co. v. Natural Resources Commission, 71 Mich. App. 667, 249 N.W.2d 135 (1976), judgment aff'd, 406 Mich. 1, 276 N.W.2d 141 (1979).
Or.—Allen v. County of Jackson County, 169 Or. App. 116, 7 P.3d 739 (2000).

3 U.S.—Cherry v. Mayor and City Council of Baltimore City, 762 F.3d 366 (4th Cir. 2014), cert. denied, 135 S. Ct. 768, 190 L. Ed. 2d 641 (2014).

4 U.S.—Council 31 of the American Federation of State, County and Municipal Employees, AFL-CIO v. Quinn, 680 F.3d 875 (7th Cir. 2012); Pure Wafer, Inc. v. City of Prescott, 14 F. Supp. 3d 1279 (D. Ariz. 2014); Crosby v. City of Gastonia, 682 F. Supp. 2d 537 (W.D. N.C. 2010), judgment aff'd, 635 F.3d 634 (4th Cir. 2011).

5 U.S.—TM Park Ave. Associates v. Pataki, 214 F.3d 344, 145 Ed. Law Rep. 147 (2d Cir. 2000); Crosby v. City of Gastonia, 682 F. Supp. 2d 537 (W.D. N.C. 2010), judgment aff'd, 635 F.3d 634 (4th Cir. 2011).

6 U.S.—Chester County Aviation Holdings, Inc. v. Chester County Aviation Authority, 967 F. Supp. 2d 1098 (E.D. Pa. 2013).

7 U.S.—TM Park Ave. Associates v. Pataki, 214 F.3d 344, 145 Ed. Law Rep. 147 (2d Cir. 2000).
Distinction
A distinction exists between a state or local government's impairment of a contract in violation of the Contract Clause and a state or local government's mere breach of a contract; where an impairment raises a constitutional question, a mere breach does not.
U.S.—Crosby v. City of Gastonia, 682 F. Supp. 2d 537 (W.D. N.C. 2010), judgment aff'd, 635 F.3d 634 (4th Cir. 2011).

8 U.S.—Municipality of Anchorage v. Alaska, 393 F. Supp. 2d 958 (D. Alaska 2005); Union Pacific R. Co. v. Village of South Barrington, 958 F. Supp. 1285, 34 U.C.C. Rep. Serv. 2d 98 (N.D. Ill. 1997).

9 U.S.—Crosby v. City of Gastonia, 682 F. Supp. 2d 537 (W.D. N.C. 2010), judgment aff'd, 635 F.3d 634 (4th Cir. 2011).
Prevention from seeking remedies
An ordinary breach of contract is not an impairment for purposes of the Contract Clause; rather, the government impairs its contractual obligations only when it uses the legislative power to relieve itself of those obligations, which prevents the other party from seeking remedies for what would otherwise be a breach of contract.
U.S.—Pure Wafer, Inc. v. City of Prescott, 14 F. Supp. 3d 1279 (D. Ariz. 2014).

10 U.S.—Eric M. Berman, P.C. v. City of New York, 895 F. Supp. 2d 453 (E.D. N.Y. 2012).

11 Or.—Strunk v. Public Employees Retirement Bd., 338 Or. 145, 108 P.3d 1058 (2005).

End of Document

16A C.J.S. Constitutional Law § 523

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

1. Contracts to Which State is a Party

§ 523. State-grated franchises

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2695, 2696, 2698, 2706, 2708, 2710, 2711, 2714

Franchises granted by a state are, when acted on by the grantee, contractual and create obligations entitled to constitutional protection from impairment.

Franchises granted by a state or a political subdivision thereof to an individual or corporation are, when acted on by the grantee, contractual and create obligations which are entitled to constitutional protection from impairment.[1] Since even a substantial impairment of a public contract may be constitutional if it is necessary to serve a legitimate public purpose,[2] the fact that franchises by the State are adversely affected by its lawful exercise of its police power does not amount to an impairment of the obligation of the State's contract.[3] Requiring compliance with, or the enforcement of, a statutory or other condition which was attached to a franchise at the time it was granted cannot be said to be an impairment of any obligation binding on the state in the constitutional sense.[4]

In the absence of a clearly expressed intention to surrender the right to tax a franchise a law imposing such tax does not offend the Contract Clause of the constitution.[5]

Footnotes

1 Ark.—Arkansas Power & Light Co. v. West Memphis Power & Water Co., 187 Ark. 41, 58 S.W.2d 206 (1933).
Nev.—City of North Las Vegas v. Central Tel. Co., 85 Nev. 620, 460 P.2d 835 (1969).
Ohio—City of Newark v. Public Utilities Commission, 103 Ohio St. 158, 138 N.E. 96 (1921).

2 § 520.

3 Ohio—Board of Com'rs of Franklin County v. Public Utilities Commission, 107 Ohio St. 442, 107 Ohio St. 465, 1 Ohio L. Abs. 389, 140 N.E. 87, 30 A.L.R. 429 (1923).

4 U.S.—City of Pomona v. Sunset Tel. & Tel. Co., 224 U.S. 330, 32 S. Ct. 477, 56 L. Ed. 788 (1912).
Del.—Artesian Water Co. v. State, Dept. of Highways and Transp., 330 A.2d 432 (Del. Super. Ct. 1974), judgment modified on other grounds, 330 A.2d 441 (Del. 1974).
Ind.—Decatur County Rural Elec. Membership Corp. v. Public Service Co. of Indiana, 261 Ind. 128, 301 N.E.2d 191 (1973).
Ky.—Muscovalley v. Horn, 246 Ky. 778, 56 S.W.2d 354 (1932).

5 U.S.—Puget Sound Power & Light Co. v. City of Seattle, Wash., 291 U.S. 619, 54 S. Ct. 542, 78 L. Ed. 1025 (1934).
Md.—Diamond Match Co. v. State Tax Commission, 175 Md. 234, 200 A. 365 (1938).

End of Document

16A C.J.S. Constitutional Law § 524

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

1. Contracts to Which State is a Party

§ 524. Publicly issued licenses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2700

A license or permit does not constitute a contract within the meaning of constitutional provisions forbidding impairment of the obligation of contract but is a privilege, which can be modified or revoked by subsequent legislation.

A license or permit granted by public authority such as a state or a political subdivision thereof does not constitute a contract within the meaning of state and federal constitutional provisions forbidding impairment of the obligation of contract.[1] Rather, such a license or permit, so granted, is a privilege,[2] which can be modified, suspended, or revoked by subsequent legislation.[3] Furthermore, a statute requiring a license for the performance of certain acts does not constitute a law impairing the obligation of a state's contract.[4]

A statute imposing a license or business tax[5] or increasing a registration fee[6] ordinarily cannot be held to be invalid as impairing the obligation of a contract, contrary to the constitutional prohibition.

A statute restricting the class of those who shall be eligible to obtain a license does not impair the obligation of a preexisting contract which does not oblige the State to issue any license,[7] nor does a statute imposing additional burdens on persons who

have been licensed constitute any violation of such constitutional provision.[8] A rule by a state board, under a state statute, withholding from a certain class a license or permit to do a certain act does not constitute an impairment of any contractual obligation.[9] In addition, the repeal of a statute promising exemption from licensing regulations does not constitute an impairment of a contractual obligation within the meaning of the constitution.[10]

Since licenses may for due cause be revoked at any time by the licensing authorities,[11] a statute which revokes a license previously granted by the legislature, or interferes with rights enjoyed under the license, does not constitute an impairment of a contract within constitutional prohibitions.[12] A license authorizing a person to practice a profession,[13] to perform a certain act,[14] to carry on a particular business,[15] or to make a particular use of property[16] is, accordingly, not protected from revocation or impairment by the Contract Clause of the constitution.

Footnotes

1 U.S.—Semler v. Oregon State Bd. of Dental Examiners, 294 U.S. 608, 55 S. Ct. 570, 79 L. Ed. 1086 (1935).
Ohio—Murphy v. Ohio Dept. of Highway Safety, 18 Ohio App. 3d 99, 481 N.E.2d 648 (11th Dist. Lake County 1984).

2 Ill.—County of Cook v. Kontos, 206 Ill. App. 3d 1085, 152 Ill. Dec. 7, 565 N.E.2d 249 (1st Dist. 1990).
Mo.—Jones v. Director of Revenue, 855 S.W.2d 495 (Mo. Ct. App. E.D. 1993).

3 Mich.—Midwest Teen Centers, Inc. v. City of Roseville, 36 Mich. App. 627, 193 N.W.2d 906 (1971).
Or.—State ex rel. Cox v. Hibbard, 31 Or. App. 269, 570 P.2d 1190 (1977).

4 Or.—Semler v. Oregon State Board of Dental Examiners, 148 Or. 50, 34 P.2d 311 (1934), aff'd, 294 U.S. 608, 55 S. Ct. 570, 79 L. Ed. 1086 (1935).

5 Fla.—Amos v. Gunn, 84 Fla. 285, 94 So. 615 (1922).
N.Y.—O'Gara v. Joseph, 202 Misc. 28, 115 N.Y.S.2d 469 (Sup 1952).
Contract arising under uniform compact
Iowa—General Expressways, Inc. v. Iowa Reciprocity Bd., 163 N.W.2d 413 (Iowa 1968).

6 N.Y.—Medical Soc. of State v. Sobol, 192 A.D.2d 78, 600 N.Y.S.2d 177 (3d Dep't 1993).

7 U.S.—Olin v. Kitzmiller, 259 U.S. 260, 42 S. Ct. 510, 66 L. Ed. 930 (1922).

8 U.S.—Semler v. Oregon State Bd. of Dental Examiners, 294 U.S. 608, 55 S. Ct. 570, 79 L. Ed. 1086 (1935).
Ark.—In re Supreme Court License Fees, 251 Ark. 800, 483 S.W.2d 174 (1972).
Tex.—State v. Project Principle, Inc., 724 S.W.2d 387, 37 Ed. Law Rep. 961 (Tex. 1987).

9 Ohio—Mahoning Express Co. v. Public Utilities Commission of Ohio, 128 Ohio St. 369, 191 N.E. 368 (1934).
Taking bar exam
Where a state bar association changed the admission requirements to require graduation from law school but granted those who had previously studied under an attorney a specified number of years within which to take the bar exam, a refusal of an application after a grace period from a person who had not graduated from law school did not impair an obligation of contract.
U.S.—Moity v. Louisiana State Bar Ass'n, 414 F. Supp. 176 (E.D. La. 1976).

10 Ala.—Samples v. State, 19 Ala. App. 478, 98 So. 211 (1923), judgment aff'd, 210 Ala. 544, 98 So. 803 (1924).

11 C.J.S., Licenses § 82.

12 U.S.—Semler v. Oregon State Bd. of Dental Examiners, 294 U.S. 608, 55 S. Ct. 570, 79 L. Ed. 1086 (1935).
Mich.—Johnson v. Liquor Control Com'n, 266 Mich. 682, 254 N.W. 557 (1934).
Va.—Goe v. Gifford, 168 Va. 497, 191 S.E. 783 (1937).

13 U.S.—Semler v. Oregon State Bd. of Dental Examiners, 294 U.S. 608, 55 S. Ct. 570, 79 L. Ed. 1086 (1935).
Change in statute governing revocation
A change in an Illinois statute governing the revocation of the health care licenses of individuals convicted of certain criminal offenses, making revocation mandatory rather than discretionary, did not violate the

Contract Clause for purposes of a physician's challenge to license revocation under the statute but instead was a mere exercise of the state's police power where the change was intended to protect the public from health care professionals who had been convicted of qualifying crimes upon a finding that the previous discretionary nature of revocations was insufficient to serve that interest.

U.S.—Bhalerao v. Illinois Dept. of Financial and Professional Regulations, 834 F. Supp. 2d 775 (N.D. Ill. 2011).

Temporary permit to practice law

Kan.—State ex rel. Stephan v. Adam, 243 Kan. 619, 760 P.2d 683 (1988).

Disqualification of attorney for violation of rules of ethics

Ohio—Sauer v. Greene, 62 Ohio App. 3d 22, 574 N.E.2d 542 (2d Dist. Montgomery County 1989).

14 **Operation of motor vehicle**

Wash.—Rawson v. Department of Licenses, 15 Wash. 2d 364, 130 P.2d 876 (1942).

W. Va.—Nulter v. State Road Commission of West Virginia, 119 W. Va. 312, 193 S.E. 549 (1937).

15 Me.—Appeal of Bornstein, 126 Me. 532, 140 A. 194 (1928).

Wis.—Olson v. State Conservation Commission, 235 Wis. 473, 293 N.W. 262 (1940).

16 Mass.—City of Lowell v. Archambault, 189 Mass. 70, 75 N.E. 65 (1905).

End of Document

16A C.J.S. Constitutional Law § 525

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

1. Contracts to Which State is a Party

§ 525. Securities issued by state

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2703, 2704

Holders of securities issued by the State under statutory authorization are protected against subsequent legislation which will impair the contractual obligation evidenced by such securities.

Generally, the law under which public bonds are issued forms a contract between the issuing authority and the bondholders.[1] Holders of state bonds are protected against subsequent legislation that will impair the contractual obligation evidenced by their bonds.[2] In order for a statute relating to securities issued by the state to deprive a party to a contract of an essential contractual obligation, it is not necessary that the impairment totally destroy the obligation; the extent of the impairment is, however, a relevant factor in determining its reasonableness.[3]

A statute which substantially deprives the holders of the bonds or interest coupons or certificates of indebtedness of the State of any rights to which they were entitled under the laws in force at the time of the issue of such obligations,[4] or which withdraws from state officers the power of carrying out the contract evidenced by such instruments of indebtedness,[5] or diverts to other uses

funds or property created or held under existing laws for the purpose of paying particular debts of the State,[6] is unconstitutional as impairing the obligation of contracts.

On the other hand, except to the extent that contract rights have been acquired to particular property or funds, the property and funds of the State are within the control of the State and their use and disposition may be changed by statute.[7] Furthermore, as long as appropriations do not exceed the amount that would be due with interest on bonds authorized but not issued, such appropriations cannot be said to impair the obligation of contract evidenced by bonds actually issued and outstanding;[8] nor does the setting aside of a bid for state bonds constitute an impairment of contractual obligations represented by valid outstanding bonds where the bid could not, in any event, have been made effective for want of compliance with existing law.[9]

Footnotes

1 S.C.—Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000).

2 Ariz.—Arizona State Highway Commission v. Nelson, 105 Ariz. 76, 459 P.2d 509 (1969).
Cal.—Veterans of Foreign Wars v. State of California, 36 Cal. App. 3d 688, 111 Cal. Rptr. 750 (3d Dist. 1974).
N.J.—New Jersey Sports and Exposition Authority v. McCrane, 61 N.J. 1, 292 A.2d 545 (1972).
Imposition of property taxes
The imposition of ad valorem property taxes on the property of a public service authority violated the Contract Clauses of both the United States and state constitutions by impairing the state's statutory covenant not to alter any rights of the authority and the statutory tax exemption granted the authority, an important security provision to the bondholders.
S.C.—South Carolina Public Service Authority v. Summers, 282 S.C. 148, 318 S.E.2d 113 (1984).

3 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).
N.Y.—Patterson v. Carey, 41 N.Y.2d 714, 395 N.Y.S.2d 411, 363 N.E.2d 1146 (1977).

4 Ga.—State v. State Toll Bridge Authority, 210 Ga. 690, 82 S.E.2d 626 (1954).
Mich.—Ziegler v. Witherspoon, 331 Mich. 337, 49 N.W.2d 318 (1951).
N.J.—New Jersey Highway Authority v. Sills, 109 N.J. Super. 424, 263 A.2d 498 (Ch. Div. 1970), opinion supplemented, 111 N.J. Super. 313, 268 A.2d 308 (Ch. Div. 1970), judgment aff'd, 58 N.J. 432, 278 A.2d 489 (1971) and judgment aff'd, 58 N.J. 432, 278 A.2d 489 (1971).

5 U.S.—State of Louisiana ex rel. Elliott v. Jumel, 107 U.S. 711, 2 S. Ct. 128, 27 L. Ed. 448 (1883).
Wash.—Ruano v. Spellman, 81 Wash. 2d 820, 505 P.2d 447 (1973).

6 U.S.—Trustees of Wabash & Erie Canal Co. v. Beers, 67 U.S. 448, 17 L. Ed. 327, 1862 WL 6755 (1862).
Ariz.—Arizona State Highway Commission v. Nelson, 105 Ariz. 76, 459 P.2d 509 (1969).
Wash.—Ruano v. Spellman, 81 Wash. 2d 820, 505 P.2d 447 (1973).
Covenant regarding mass transit
The Contract Clause was violated by the enactment of a statute which repealed a statutory covenant made by two states that limited the ability of the port authority to subsidize rail passenger transportation from revenues and reserves; such impairment of the State's contract with bondholders was not justified by the goals of mass transportation, energy conservation and environmental protection, or by the more specific aim of encouraging users of private automobiles to shift to public transportation.
U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).

7 Del.—Opinion of the Justices, 246 A.2d 90 (Del. 1968).
Ill.—Continental Illinois Nat. Bank & Trust Co. of Chicago v. Illinois State Toll Highway Commission, 42 Ill. 2d 385, 251 N.E.2d 253 (1969).
La.—Drewett v. State, 334 So. 2d 443 (La. Ct. App. 1st Cir. 1976), writ denied, 338 So. 2d 288 (La. 1976).
Effect of State's self-interest
The prohibition in the Federal Constitution against impairment of contract is not an absolute bar to a subsequent modification of the State's own financial obligations where there is an appropriate exercise of

police power, but complete deference to a legislative assessment of reasonableness and necessity is not appropriate where the State's self-interest is at stake.

N.Y.—Patterson v. Carey, 41 N.Y.2d 714, 395 N.Y.S.2d 411, 363 N.E.2d 1146 (1977).

Persons approving modification of tolls

An amendatory provision of a statute conferring upon the governor and other state officers the right in effect to veto toll adjustments, their approvals being required before tolls may be modified, is not violative of a proscription against the impairment of contracts, even if it is deemed a modification of a bondholders' agreement, absent a demonstration of any adverse financial impact upon the bonds.

N.J.—Fidelity Union Trust Co. v. New Jersey Highway Authority, 85 N.J. 277, 426 A.2d 488 (1981).

8 Okla.—State v. Howard, 1918 OK 93, 67 Okla. 296, 171 P. 41 (1918).

9 Cal.—Stephens v. State Treasurer, 184 Cal. 721, 195 P. 651 (1921).

End of Document

16A C.J.S. Constitutional Law § 526

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

1. Contracts to Which State is a Party

§ 526. Grants and sales or leases of land by state

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2701, 2705

Grants and sales or leases of land by a state are entitled to constitutional protection under the Contract Clause.

A disposition of land by the state, such as by sale[1] or lease,[2] may not be impaired by a subsequent statute or in any other manner.[3] A grant from the state, being an executed contract, is also within the constitutional protection of the Contract Clause.[4] Thus, statutes have been held void for impairing grants of land to educational institutions.[5] A statute providing for a grant of lands by the state on the performance by the grantee of a condition precedent creates a contract with the party performing the condition, and the legislature may not impair this contract by a subsequent act.[6]

A contract for sale of public lands, however, is not established by the filing, under existing laws, of an application to purchase,[7] or by the tender of the statutory price,[8] or by other acts short of payment of some installment of the purchase price.[9] Thus, the repeal of a statute whereby a state merely offers to grant state land does not constitute an impairment of any contractual obligation within the constitutional meaning.[10]

A lease with an option to purchase may not be impaired by a statute which, while merely in the public welfare, is not so in the public interest as to justify impairment.[11] A statute which is within the contemplation of the parties to a lease when they entered into the agreement does not constitute an impairment of contract.[12]

Eminent domain.

Exercise by the State of its right of eminent domain cannot be said to impair its contractual obligations under previous grants of land made by the State since all grants are made subject to the right of the State to seize land for public use.[13]

Footnotes

1 Cal.—McGinn v. State Bd. of Harbor Com'rs, 113 Cal. App. 695, 299 P. 100 (1st Dist. 1931).

2 Neb.—Todd v. Board of Educational Lands and Funds of Neb., 154 Neb. 606, 48 N.W.2d 706 (1951).
N.C.—Ogelsby v. Adams, 268 N.C. 272, 150 S.E.2d 383 (1966).

3 N.Y.—In re 2 Oakland Ave., Amsterdam, 200 Misc. 408, 105 N.Y.S.2d 149 (County Ct. 1951).

4 U.S.—Anderson-Tully Co. v. Murphree, 153 F.2d 874 (C.C.A. 8th Cir. 1946).
N.Y.—Saratoga State Waters Corporation v. Pratt, 227 N.Y. 429, 125 N.E. 834 (1920).

5 Ky.—Graded School Dist. No. 2 v. Trustees of Bracken Academy, 95 Ky. 436, 15 Ky. L. Rptr. 856, 26 S.W. 8 (1894).
Vt.—Trustees of Caledonia County Grammar School v. Kent (State report: Trustees of Caledonia County Grammar School v. Howard), 84 Vt. 1, 77 A. 877 (1910).

6 U.S.—Houston & T.C. Ry. Co. v. State of Tex., 170 U.S. 243, 18 S. Ct. 610, 42 L. Ed. 1023 (1898).
Ark.—Waldon v. Holland, 206 Ark. 401, 175 S.W.2d 570 (1943).

7 U.S.—Banning Co. v. People of State of Cal., 240 U.S. 142, 36 S. Ct. 338, 60 L. Ed. 569 (1916).

8 U.S.—J.W. Frellsen & Co. v. Crandell, 217 U.S. 71, 30 S. Ct. 490, 54 L. Ed. 670 (1910).

9 U.S.—Banning Co. v. People of State of Cal., 240 U.S. 142, 36 S. Ct. 338, 60 L. Ed. 569 (1916).

10 La.—State ex rel. Fitzpatrick v. Grace, 187 La. 1028, 175 So. 656 (1936).

11 **Purchase of state land by political subdivision**
U.S.—Aerojet-General Corp. v. Askew, 366 F. Supp. 901 (N.D. Fla. 1973), judgment aff'd, 511 F.2d 710 (5th Cir. 1975).

12 **Statute operative on right to renewal**
N.C.—Oglesby v. McCoy, 41 N.C. App. 735, 255 S.E.2d 773 (1979).

13 Tex.—National Ass'n of Audubon Societies v. Arroyo Colorado Nav. Dist. of Cameron and Willacy Counties, 110 S.W.2d 150 (Tex. Civ. App. San Antonio 1937).

16A C.J.S. Constitutional Law § 527

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

1. Contracts to Which State is a Party

§ 527. Grants of water rights by state

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2705

Grants of water rights by a state which constitute contracts with the state are entitled to constitutional protection.

The right to divert waters under state constitutional provisions which guarantee that such right shall not be denied has been held to rise to the dignity of a contract imposing on the State an obligation which cannot be impaired by subsequent action of the State.[1]

On the other hand, because water rights and duties are always subject to regulation under the police power, exercise of the police power constitutes neither a constitutional "taking" nor an unconstitutional impairment of the obligation of contract.[2] For example, a right granted by a state to construct a dam across a stream is subject to the paramount right of the State to exercise its police power without regard to the impairment clause of the constitution.[3]

It has been held that a municipality, as a political subdivision of the state, cannot, either in a governmental or proprietary capacity, invoke the Contract Clause of the Federal Constitution against the right of the state by statute to impose a fee for diversion of

waters.[4] A judicial construction adverse to the grantee of a reservation to the state of a certain water power in a grant of lands does not constitute an impairment of the obligation of contracts.[5]

Footnotes

1 Colo.—La Plata River & Cherry Creek Ditch Co. v. Hinderlider, 93 Colo. 128, 25 P.2d 187 (1933).

2 Cal.—Turlock Irr. Dist. v. Zanker, 140 Cal. App. 4th 1047, 45 Cal. Rptr. 3d 167 (5th Dist. 2006).

3 Mo.—Max v. Barnard-Bolckow Drainage Dist., 326 Mo. 723, 32 S.W.2d 583 (1930).

4 U.S.—City of Trenton v. State of New Jersey, 262 U.S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A.L.R. 1471 (1923).

5 U.S.—Columbia Water-Power Co. v. Columbia Elec. Street-Railway, Light & Power Co., 172 U.S. 475, 19 S. Ct. 247, 43 L. Ed. 521 (1899).

16A C.J.S. Constitutional Law § 528

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

1. Contracts to Which State is a Party

§ 528. Purchases at tax sale

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2720

The sale of land for delinquent taxes constitutes a contract between the purchaser and the State within the constitutional provisions prohibiting the impairment of the obligation of contracts.

The sale of land for delinquent taxes constitutes a contract between the purchaser and the State within constitutional provisions prohibiting impairment of the obligation of contracts.[1] Moreover, the law in force at the time a tax sale is made becomes a part of the purchaser's contract,[2] and any subsequent statute which attempts to deprive the purchaser of any substantial right secured to the purchaser by the existing law is void as impairing the obligation of contracts.[3]

A statute is unconstitutional when it grants such leniency to the tax debtor as to reduce the remedy of the tax sale purchaser to a shadow.[4] A statute which attempts to annul tax sales previously made,[5] or to convert a certificate of sale into a certificate of delinquency,[6] or to withdraw a penalty or quasi-penalty adjoined to a tax certificate as an incentive to promote prompt redemption of the certificated tax delinquencies, is void.[7] Other types of statutes which are unconstitutional as impairing the obligation of the state under its contract with the tax sale purchaser are those which attempt to place on a plane of equal dignity

with tax liens, liens which were inferior at the time of the sale for taxes,[8] or to deprive the purchaser of the right to a deed,[9] or to extend the time of redemption,[10] or to reduce the amount to be paid the purchaser on redemption.[11]

Statutes which relate merely to the remedies of the purchaser for enforcing the rights acquired by the purchase, as long as they leave the purchaser some substantial remedy, are not, however, unconstitutional within the Contract Clause.[12] Thus, statutes are not void as impairing the obligation of contracts for requiring a notice to the former owner of the expiration of the time of redemption where none was required before,[13] or for requiring such notice to be given within a shorter time than that allowed under the former law,[14] or for requiring that an action by one claiming under a tax deed for recovery of the property sold shall be brought within a certain number of years.[15]

A statute which reduces the time within which property sold at tax sale may be redeemed is not violative of the Contract Clause of the constitution.[16] Furthermore, a statute providing that right of redemption from a tax sale will continue for a specified time after filing of a prescribed notice is a valid exercise of the state's police power as an emergency measure and does not impair the contractual obligation of the state.[17]

A statute cannot be said to impair any contractual obligation of the State as regards one with whom the State has not entered contractual relations.[18] Moreover, a statute is not void as impairing the contract of the purchaser at a tax sale unless it clearly appears that, by its terms, it deprives the purchaser of rights to which the purchaser was entitled under the law in force at the time of the sale.[19] No contract by the state as to the terms of a tax sale exists until the sale is made,[20] and, therefore, the time for redemption may be shortened by a statute passed at any time before the sale.[21] Indeed, new conditions may be imposed on the exercise of the right of redemption by a statute passed at any time before actual redemption.[22]

Footnotes

1 U.S.—Wood v. Lovett, 313 U.S. 362, 61 S. Ct. 983, 85 L. Ed. 1404 (1941).
Ill.—City of Bloomington v. John Allan Co., 18 Ill. App. 3d 569, 310 N.E.2d 437 (4th Dist. 1974).

2 U.S.—Wood v. Lovett, 313 U.S. 362, 61 S. Ct. 983, 85 L. Ed. 1404 (1941).

3 U.S.—Wood v. Lovett, 313 U.S. 362, 61 S. Ct. 983, 85 L. Ed. 1404 (1941).
Ill.—City of Bloomington v. John Allan Co., 18 Ill. App. 3d 569, 310 N.E.2d 437 (4th Dist. 1974).

4 U.S.—W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935).

5 Tex.—Wright v. Giles, 60 Tex. Civ. App. 550, 129 S.W. 1163 (1910), writ refused.

6 Wash.—Barker v. Muehler, 55 Wash. 411, 104 P. 637 (1909).

7 Fla.—State ex rel. Seville Holding Co. v. Draughon, 127 Fla. 528, 173 So. 353, 111 A.L.R. 234 (1937).

8 **Special assessment liens**
U.S.—Baldwin Drainage Dist. v. Brown, 165 F.2d 260 (C.C.A. 5th Cir. 1948).
Fla.—State Adjustment Co. v. Winslow, 114 Fla. 609, 154 So. 325 (1934).

9 Wis.—State v. Gether Co., 203 Wis. 311, 234 N.W. 331 (1931).

10 U.S.—W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935).

11 U.S.—Moore v. Branch, 5 F. Supp. 1011 (S.D. Fla. 1934).

12 N.Y.—Intercounty Operating Corp. v. Nassau County, 181 Misc. 390, 48 N.Y.S.2d 730 (Sup 1943), judgment aff'd, 267 A.D. 957, 47 N.Y.S.2d 321 (2d Dep't 1944), judgment aff'd, 293 N.Y. 688, 56 N.E.2d 299 (1944).
Okla.—Hoskins v. Stevens, 1947 OK 311, 199 Okla. 297, 185 P.2d 911 (1947).

13 Fla.—Ivey v. State ex rel. Watson, 147 Fla. 635, 3 So. 2d 345 (1941).

14 Fla.—Ivey v. State ex rel. Watson, 147 Fla. 635, 3 So. 2d 345 (1941).

15 U.S.—Barrett v. Holmes, 102 U.S. 651, 26 L. Ed. 291, 1880 WL 18770 (1880).
Fla.—Ivey v. State ex rel. Watson, 147 Fla. 635, 3 So. 2d 345 (1941).
16 Ind.—Metro Holding Co. v. Mitchell, 589 N.E.2d 217 (Ind. 1992).
17 Minn.—State ex rel. Standard Inv. Co. v. Erickson, 191 Minn. 188, 253 N.W. 529 (1934).
18 Cal.—Mercury Herald Co. v. Moore, 22 Cal. 2d 269, 138 P.2d 673, 147 A.L.R. 1111 (1943).
N.M.—Yates v. Hawkins, 1942-NMSC-029, 46 N.M. 249, 126 P.2d 476 (1942).
19 Ariz.—State v. Martin, 59 Ariz. 438, 130 P.2d 48 (1942).
20 N.M.—Yates v. Hawkins, 1942-NMSC-029, 46 N.M. 249, 126 P.2d 476 (1942).
21 Mich.—Muirhead v. Sands, 111 Mich. 487, 69 N.W. 826 (1897).
22 W. Va.—State v. King, 64 W. Va. 546, 63 S.E. 468 (1908).

End of Document

16A C.J.S. Constitutional Law § 529

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

1. Contracts to Which State is a Party

§ 529. Enactments providing for remedies against the state

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2696, 2704

Statutes affecting remedies allowed by a state against itself do not offend constitutional provisions as to impairment of contract obligations.

An act of the legislature allowing the State to be sued is a mere grant of a privilege, and not a contract, the obligation of which is impaired by a subsequent statute withdrawing[1] or granting[2] the right. The State may, therefore, change the time and method of enforcing a claim against it.[3]

Footnotes

1 U.S.—Duke Power Co. v. South Carolina Tax Com'n, 81 F.2d 513 (C.C.A. 4th Cir. 1936).
N.C.—O'Neal v. Wake County, 196 N.C. 184, 145 S.E. 28 (1928).
Waiver of immunity withdrawn

The State, which had previously waived its immunity to suit in federal court pursuant to a Social Security Act provision which was subsequently repealed during the pendency of an appeal, could be constitutionally permitted to withdraw the waiver without resulting in an impairment of the contract with the plaintiff.

U.S.—Hospital Ass'n of New York State v. Toia, 435 F. Supp. 819 (S.D. N.Y. 1977).

2 Minn.—In re Individual 35W Bridge Litigation, 806 N.W.2d 820 (Minn. 2011).

3 Tex.—Williams v. Reed, 160 S.W.2d 316 (Tex. Civ. App. San Antonio 1942), writ refused w.o.m., (Apr. 29, 1942).

Limiting interest

Nothing in a statute, limiting the rate of interest on claims against public corporations impairs a claimant's ability to recover for breach of contract and loss of profits and thus there can be no genuine issue under the Contract Clause.

N.Y.—Ardsley Const. Co., Inc. v. Port of New York Authority, 99 Misc. 2d 945, 417 N.Y.S.2d 649 (Sup 1979).

Person designated to decide claims

Del.—James Julian, Inc. v. Hall, 349 A.2d 750 (Del. Super. Ct. 1975).

End of Document

16A C.J.S. Constitutional Law § 530

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

2. State Legislative Control over Municipal Corporations

§ 530. Relationship between municipal corporation and state as giving rise to or affecting prohibition

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2669, 2680, 2681, 2685, 2688, 2689, 2692, 2695 to 2699, 2707, 2726

Since municipal corporations are mere creatures of the state, a state statute cannot be held to impair any obligation of contract due by the state to such corporations.

Municipal corporations, such as counties, cities, and towns, being mere creatures and agents of the State, are not in any contractual relationship with the State and so are not within the provision that renders laws impairing the obligation of contracts unconstitutional; at the pleasure of the State, their charters may be amended, changed, or revoked, subject only to the restraints of special constitutional provisions.[1] This is particularly true with respect to changes affecting municipal corporations in their governmental capacity[2] although the rule stated is applicable regardless of whether such corporations are affected in their governmental or proprietary capacity.[3]

Accordingly, a state statute imposing on municipal corporations additional burdens is not unconstitutional as an impairment of contractual obligations,[4] such as the imposition of license fees[5] or a statute authorizing an increase in gas rates.[6] Powers granted may be recalled[7] or modified.[8]

Footnotes

1 U.S.—City of Trenton v. State of New Jersey, 262 U.S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A.L.R. 1471 (1923).
Tenn.—First Utility Dist. of Carter County v. Clark, 834 S.W.2d 283 (Tenn. 1992).

2 U.S.—City of Trenton v. State of New Jersey, 262 U.S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A.L.R. 1471 (1923).
N.J.—Clark v. Byrne, 165 N.J. Super. 98, 397 A.2d 719 (Law Div. 1978), judgment aff'd, 165 N.J. Super. 16, 397 A.2d 685 (App. Div. 1978).

3 U.S.—City of Trenton v. State of New Jersey, 262 U.S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A.L.R. 1471 (1923).

4 U.S.—City of Trenton v. State of New Jersey, 262 U.S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A.L.R. 1471 (1923).
Tex.—Wheeler v. City of Brownsville, 148 Tex. 61, 220 S.W.2d 457 (1949).

5 U.S.—City of Trenton v. State of New Jersey, 262 U.S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A.L.R. 1471 (1923).

6 U.S.—City of Tulsa v. Oklahoma Natural Gas Co., 4 F.2d 399 (E.D. Okla. 1925).

7 Ind.—Central Union Telephone Co. v. Indianapolis Telephone Co., 189 Ind. 210, 126 N.E. 628 (1920).

8 U.S.—Ashland Waterworks Co. v. City of Ashland, 251 F. 492 (C.C.A. 6th Cir. 1918).

End of Document

16A C.J.S. Constitutional Law § 531

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

2. State Legislative Control over Municipal Corporations

§ 531. Contracts and franchises between municipal corporation and state

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2669, 2680, 2681, 2685, 2688, 2689, 2692, 2695 to 2699, 2726

Franchises granted to municipalities, in their governmental capacities, are not entitled to constitutional protection under the Contract Clause.

A franchise held by a municipal corporation in its governmental capacity is revocable at any time by the legislature.[1] The legislature may revoke franchises granted by the city under delegated power.[2]

The State has power to abrogate or alter the nature or amount of any charges for franchises in favor of municipalities.[3]

Property grant.

A grant of property by the State to a municipal corporation for public or governmental purposes is regarded, not as a contract, but as a mere appropriation of public property for a public purpose, and a subsequent statute recalling or changing the appropriation is, therefore, not open to the objection that it impairs the obligation of a contract.[4]

Footnotes

1 U.S.—New Orleans, M. & T.R. Co. v. Ellerman, 105 U.S. 166, 26 L. Ed. 1015, 1881 WL 19832 (1881).

2 Wis.—State ex rel. Cream City Ry. Co. v. Hilbert, 72 Wis. 184, 39 N.W. 326 (1888).

3 Cal.—Tulare County v. City of Dinuba, 188 Cal. 664, 206 P. 983 (1922).

4 S.C.—Chesterfield County v. State Highway Dept. of South Carolina, 191 S.C. 19, 3 S.E.2d 686 (1939).
Tenn.—Cunningham v. Broadbent, 177 Tenn. 202, 147 S.W.2d 408 (1941).

End of Document

16A C.J.S. Constitutional Law § 532

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

2. State Legislative Control over Municipal Corporations

§ 532. Levy and collection of taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2718

In the absence of special constitutional provisions, matters pertaining to the levy and collection of taxes imposed by municipal corporations are within the control of the state legislature uninhibited by constitutional provisions prohibiting impairment of contractual obligations.

In the absence of special constitutional provisions, the State has full control over the exercise of powers of taxation by a municipal corporation so that the purposes for which municipal corporations may lay taxes, and the time and manner in which property may be assessed and taxed by municipal authorities, are under the absolute control of the legislature.[1] Furthermore, no municipality can acquire contract rights to any particular portion of its revenue, or to any particular assessment or method of assessment, which cannot be controlled, modified, or taken away by the legislature.[2]

It is within the power of the legislature uninhibited by the Contract Clause of the constitution to prohibit a levy,[3] expand or restrict the amount of a tax levy,[4] or to increase[5] or reduce[6] the rate of a tax. The state legislature may, moreover, without impairing any contractual obligation within the constitutional sense, exempt certain property from municipal taxation, either general[7] or special.[8]

With respect to assessments for the purpose of taxation by municipal corporations, an "assessment contract" is not the kind of contractual obligation protected by the federal and state constitutional prohibitions against the impairment of contracts.[9] The constitution is not violated by laws which purport to change an assessment,[10] authorize a reassessment[11] or supplementary assessment,[12] validate a prior defective assessment,[13] change the method of assessment,[14] or set aside an assessment.[15] Furthermore, a statute requiring municipalities to contract with the state to assess, collect, and enforce municipal sales and use taxes did not unconstitutionally impair a city's obligation of contracts, even though the statute impaired a contract between the city and a private company that collected the city's municipal taxes, since the statute served the legitimate public purpose of simplifying and streamlining sales and use tax collections and reducing and eliminating the burden and costs of collecting taxes for both the state and its political subdivisions.[16]

Footnotes

1 U.S.—Williamson v. State of New Jersey, 130 U.S. 189, 9 S. Ct. 453, 32 L. Ed. 915 (1889).
W. Va.—City of Huntington v. Chesapeake & Potomac Tel. Co., 154 W. Va. 634, 177 S.E.2d 591 (1970).

2 U.S.—Williamson v. State of New Jersey, 130 U.S. 189, 9 S. Ct. 453, 32 L. Ed. 915 (1889).
W. Va.—City of Huntington v. Chesapeake & Potomac Tel. Co., 154 W. Va. 634, 177 S.E.2d 591 (1970).

3 Va.—Commonwealth v. United Cigarette Mach. Co., 120 Va. 835, 92 S.E. 901 (1917).

4 N.D.—State v. Flaherty, 45 N.D. 549, 178 N.W. 790 (1920).

5 Tex.—City of Henderson v. Fields, 258 S.W. 523 (Tex. Civ. App. Texarkana 1924), writ dismissed w.o.j., (Apr. 2, 1924).

6 N.C.—Smith-Courtney Co. v. Board of Road Com'rs of Hertford County, 182 N.C. 149, 108 S.E. 443 (1921).

7 Ga.—City of Macon v. Georgia Power Co., 171 Ga. 40, 155 S.E. 34 (1930).

8 U.S.—Williamson v. State of New Jersey, 130 U.S. 189, 9 S. Ct. 453, 32 L. Ed. 915 (1889).
Ga.—City of Macon v. Georgia Power Co., 171 Ga. 40, 155 S.E. 34 (1930).

9 Cal.—Consolidated Fire Protection Dist. of Los Angeles County v. Howard Jarvis Taxpayers' Ass'n, 63 Cal. App. 4th 211, 73 Cal. Rptr. 2d 586 (2d Dist. 1998).

10 Mo.—Collins v. A. Jaicks Co., 279 Mo. 404, 214 S.W. 391 (1919).

11 Ark.—Earle Road Imp. Dist. v. Johnson, 145 Ark. 438, 224 S.W. 965 (1920).

12 Mo.—State ex rel. Ross, to Use of Drainage District No. 8 of Pemiscot County v. General American Life Ins. Co., 336 Mo. 829, 85 S.W.2d 68 (1935).

13 Vt.—Durkee v. City of Barre, 81 Vt. 530, 71 A. 819 (1909).

14 N.J.—Flock v. Smith, 65 N.J.L. 224, 47 A. 442 (N.J. Ct. Err. & App. 1900).

15 Wis.—Newton v. City of Superior, 146 Wis. 308, 131 N.W. 986 (1911).

16 Okla.—City of Tulsa v. State, 2012 OK 47, 278 P.3d 602 (Okla. 2012), as corrected, (May 29, 2012).

16A C.J.S. Constitutional Law § 533

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

2. State Legislative Control over Municipal Corporations

§ 533. Management and disposition of municipal funds and property

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2669, 2680, 2681, 2685, 2688, 2689, 2692, 2695 to 2699, 2726

Legislative control of the management and disposition of municipal funds and other property is not usually subject to the constitutional protection afforded contracts.

The legislature may control the management[1] and disposition of municipal funds raised by taxation[2] or derived from license fees[3] and may make changes in the proportion of public revenue appropriated to county and city respectively.[4] In addition, the legislature may control the manner of payment of municipal debts.[5] However, property or funds held in trust by a municipal corporation for charitable purposes may not be diverted by the legislature from the purposes to which they have been devoted by the acts of donors and the acceptance of the municipality.[6]

Changed territorial limits.

The public property of a municipal corporation, held by it as a subordinate part of the government for public uses, is subject to the authority of the legislature, on changing corporate boundaries, to transfer or apportion it to or among the municipalities affected by the changes for the same uses.[7]

As incidental to territorial change, the legislature may direct, as it considers equitable, the manner in which debts or liabilities of the municipalities affected shall be met and by whom.[8] Assent to annexation given by a majority of the voters in the annexed district, as a necessary condition on which a statute authorizing annexation should become operative, does not make the act a contract[9] or limit the power of the state to levy taxes within the annexed territory to the rate prescribed in the act.[10] The relationship of a municipality and its citizens does not imply a contract that they shall not be taxed for the use of any corporation which may be annexed.[11]

Footnotes

1 Neb.—City of Fremont v. Dodge County, 130 Neb. 856, 266 N.W. 771 (1936).
N.Y.—Town of Irondequoit v. Monroe County, 158 Misc. 123, 286 N.Y.S. 533 (Sup 1935), order aff'd, 254 A.D. 933, 6 N.Y.S.2d 650 (4th Dep't 1938).

2 Neb.—City of Fremont v. Dodge County, 130 Neb. 856, 266 N.W. 771 (1936).
N.Y.—Town of Irondequoit v. Monroe County, 158 Misc. 123, 286 N.Y.S. 533 (Sup 1935), order aff'd, 254 A.D. 933, 6 N.Y.S.2d 650 (4th Dep't 1938).
Ohio—City of Cleveland v. Zangerle, 127 Ohio St. 91, 186 N.E. 805 (1933).

3 Colo.—City and County of Denver v. People, 103 Colo. 565, 88 P.2d 89 (1939).

4 Neb.—City of Fremont v. Dodge County, 130 Neb. 856, 266 N.W. 771 (1936).
Ohio—City of Cleveland v. Zangerle, 127 Ohio St. 91, 186 N.E. 805 (1933).

5 Cal.—McDonald v. Maddux, 11 Cal. 187, 1858 WL 718 (1858).
S.C.—Smith v. Walker, 74 S.C. 519, 54 S.E. 779 (1906).

6 Vt.—Jones v. Vermont Asbestos Corp., 108 Vt. 79, 182 A. 291 (1936).

7 U.S.—Attorney General of State of Michigan v. Lowrey, 199 U.S. 233, 26 S. Ct. 27, 50 L. Ed. 167 (1905).
Cal.—Johnson v. City of San Diego, 109 Cal. 468, 42 P. 249 (1895).

8 U.S.—Broughton v. Pensacola, 93 U.S. 266, 23 L. Ed. 896, 1876 WL 19679 (1876).
Tex.—Wheeler v. City of Brownsville, 148 Tex. 61, 220 S.W.2d 457 (1949).

9 Md.—Joesting v. City of Baltimore, 97 Md. 589, 55 A. 456 (1903).
Pa.—Moore v. City of Pittsburgh, 254 Pa. 185, 98 A. 1037 (1916).

10 Md.—Joesting v. City of Baltimore, 97 Md. 589, 55 A. 456 (1903).

11 U.S.—Hunter v. City of Pittsburgh, 207 U.S. 161, 28 S. Ct. 40, 52 L. Ed. 151 (1907).

16A C.J.S. Constitutional Law § 534

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

2. State Legislative Control over Municipal Corporations

§ 534. Control of officers of municipal corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2669, 2680, 2681, 2685, 2688, 2689, 2692, 2695 to 2699, 2726

Statutes relating to officers of municipal corporations have been upheld as not impairing any obligation of contract in the constitutional sense.

No violation of the constitutional provision against impairing the obligation of contracts results from the enactment by the legislature of statutes appointing municipal officers, changing the manner of their appointment or election, or vesting their appointment in state officers.[1] Furthermore, statutes transferring, altering, or abolishing the functions of such officers,[2] or changing the membership of a municipal board,[3] do not constitute an impairment of the obligation of contracts.

Footnotes

1 Ind.—Holland v. Ballard, 270 Ind. 173, 383 N.E.2d 1032 (1978).
Ohio—State ex rel. Forchheimer v. Le Blond, 108 Ohio St. 41, 1 Ohio L. Abs. 435, 140 N.E. 491 (1923).

2 Ind.—State ex rel. City of Terre Haute v. Kolsem, 130 Ind. 434, 29 N.E. 595 (1891).

3 La.—State ex rel. Porterie v. Walmsley, 183 La. 139, 162 So. 826 (1935).

End of Document

16A C.J.S. Constitutional Law § 535

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

3. Contracts Entered into by Municipalities

a. General Considerations

§ 535. Municipal contracts or grants as subject to exercise of police power, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2688

All municipal contracts or grants are made subject to a proper exercise of the police power.

All grants or contracts made by a municipal corporation are made subject to the rule of law that it may not divest itself of the governmental or police powers which it holds in trust for the public; and any action taken by the municipality or state which falls within the proper scope of these powers is valid regardless of whether or not it contravenes the terms of a prior grant or contract.[1] On the other hand, a contract concerning proprietary rights, and harmless in itself, made by a municipality in the exercise of power clearly conferred, is within the constitutional protection, and the police power cannot be invoked to abrogate or impair it.[2]

Footnotes

1 U.S.—Denver & R.G.R. Co. v. City and County of Denver, 250 U.S. 241, 39 S. Ct. 450, 63 L. Ed. 958 (1919); Pierce Oil Corp. v. City of Hope, 248 U.S. 498, 39 S. Ct. 172, 63 L. Ed. 381 (1919); New Orleans Gaslight Co. v. Drainage Commission of New Orleans, 197 U.S. 453, 25 S. Ct. 471, 49 L. Ed. 831 (1905).
Ga.—Thomas v. City of Marietta, 245 Ga. 485, 265 S.E.2d 775 (1980).
N.J.—New Jersey Sports and Exposition Authority v. McCrane, 61 N.J. 1, 292 A.2d 545 (1972).

Termination of permit

A municipal airport authority's notice of termination of an airport tenant's permit to sell fuel at an airport was in the exercise of the airport authority's public powers and did not violate the tenant's rights under the Contract Clause.

U.S.—In re Jet 1 Center, Inc., 322 B.R. 182 (Bankr. M.D. Fla. 2005).

2 N.Y.—Wa-Wa-Yanda, Inc. v. Dickerson, 18 A.D.2d 251, 239 N.Y.S.2d 473 (2d Dep't 1963).

End of Document

16A C.J.S. Constitutional Law § 536

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

3. Contracts Entered into by Municipalities

a. General Considerations

§ 536. Contracts made in nongovernmental capacity

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2669, 2680, 2681, 2685, 2688, 2689, 2690 to 2692, 2695 to 2699, 2701, 2725(6), 2726

The State has no power to impair the obligation of the contracts made by a municipal corporation in its nongovernmental capacity.

Contracts of municipalities are within the ambit of the constitutional protection afforded contracts.[1] Neither a legislature nor an electorate is free to impair a city's ability to perform its obligations under a binding contract.[2] A state or municipal legislature has no power to impair the obligation of the contracts made by a municipal corporation in the course of its nongovernmental transactions[3] even though the state constitution gives the legislature plenary power in the regulation of the affairs of such corporations.[4]

A municipal ordinance,[5] or a cooperation agreement between a municipality and a local authority,[6] may constitute a contract within the constitutional provision against impairing the obligation of contracts. Grants legally made by[7] or to[8] municipal corporations are executed contracts which cannot be impaired by the legislature.

A franchise granted by a municipality to conduct various enterprises within municipal limits, when accepted and acted on by the grantee according to its terms, is a contract which the municipality or the state cannot abolish or alter without the consent of the grantee.[9]

In order to be within the protection of the Contract Clause, the right for which protection is sought must constitute a contract.[10] A contract is not unconstitutionally impaired by an act effective before the contract was made[11] or before rights have accrued under the contract[12] or where the contract was written to conform to the statute.[13]

A contract for a definite term which has expired,[14] a void contract[15] or franchise,[16] or an invalid provision in a contract[17] or franchise[18] is not entitled to the constitutional protection.

To determine whether a contract has been unconstitutionally interfered with by a city's actions, the court examines (1) whether there has been an impairment of the contract, (2) whether the city's actions, in fact, operated as a substantial impairment of the contractual relationship, and, if so, (3) whether that impairment was nonetheless a permissible, legitimate exercise of the city's sovereign powers.[19]

Construction against impairment.

Preference will be given to that construction of a statutory[20] or constitutional[21] provision by which it will not conflict with the terms of an existing contract of the municipality.

Impairment and breach distinguished.

A distinction is to be taken between an ordinance which impairs the obligation of a contract and one which merely constitutes a breach of contract.[22] If the ordinance attempts to impair the obligation of the contract, it is void.[23] If, however, an ordinance or resolution, without attempting to impair the obligation of the contract, merely constitutes a breach of a municipal contract, the remedy is by an action for damages for the breach.[24] A municipality does not impair the obligation of contracts, in violation of the Contract Clause, merely by breaching one of its contracts or by otherwise modifying a contractual obligation.[25] Where a city breaches a contract without a state legislative mandate as a defense, as would support a Contract Clause claim, nothing generally prevents or excuses the city from performing its obligations, and thus, the city will be liable for damages only for a breach of contract.[26]

Footnotes

1 U.S.—Amwest Investments, Ltd. v. City of Aurora, Colo., 701 F. Supp. 1508 (D. Colo. 1988).
Ill.—Bond County Community School Dist. No. 2 v. Indiana Ins. Co., 269 Ill. App. 3d 488, 207 Ill. Dec. 331, 647 N.E.2d 293, 98 Ed. Law Rep. 331 (5th Dist. 1995).
N.C.—Hogan v. City of Winston-Salem, 121 N.C. App. 414, 466 S.E.2d 303 (1996), aff'd, 344 N.C. 728, 477 S.E.2d 150 (1996).

2 Ohio—State ex rel. Perona v. Arceci, 129 Ohio App. 3d 15, 716 N.E.2d 1181 (9th Dist. Summit County 1998).

Initiative

The initiative power must be exercised in a manner which does not interfere with the important protections embodied in the constitutional provision prohibiting the impairment of obligation of contracts.

Ohio—City of Middletown v. Ferguson, 25 Ohio St. 3d 71, 495 N.E.2d 380 (1986).

State legislation

Where a state passes legislation that would prevent a local government from fulfilling its obligations under a contract, there is no available damages remedy because the breaching local government is prevented by state law from performing, and, in such a case, a contract would be unconstitutionally impaired.

U.S.—Crosby v. City of Gastonia, 682 F. Supp. 2d 537 (W.D. N.C. 2010), judgment aff'd, 635 F.3d 634 (4th Cir. 2011).

3 Ill.—Chanslor-Western Oil & Development Co. v. Metropolitan Sanitary Dist. of Greater Chicago, 131 Ill. App. 2d 527, 266 N.E.2d 405 (1st Dist. 1970).

W. Va.—Mountain State Water Co. v. Town of Kingwood, 122 W. Va. 374, 9 S.E.2d 532 (1940).

Utility rates; tax surcharge

(1) A retroactive provision of an ordinance, increasing the rates charged for water by a borough, was invalid in that it impaired contractual obligations between the borough and its customers.

N.J.—Daniel v. Borough of Oakland, 124 N.J. Super. 69, 304 A.2d 757 (App. Div. 1973).

(2) A water utility's action in improperly imposing a utility tax surcharge on a paper company altered the paper company's obligation under contracts with its predecessor in interest, in which the city agreed to furnish water at a fixed rate, in violation of the impairment of Contract Clause.

Wash.—Scott Paper Co. v. City of Anacortes, 90 Wash. 2d 19, 578 P.2d 1292 (1978).

4 Cal.—Hershey v. Cole, 130 Cal. App. 683, 20 P.2d 972 (3d Dist. 1933).

Mich.—Harsha v. City of Detroit, 261 Mich. 586, 246 N.W. 849, 90 A.L.R. 853 (1933).

As to legislative control of municipal corporations, see §§ 530 to 534.

5 Idaho—City of Hayden v. Washington Water Power Co., 108 Idaho 467, 700 P.2d 89 (Ct. App. 1985).

Md.—Inlet Associates v. Assateague House Condominium Ass'n, 313 Md. 413, 545 A.2d 1296 (1988).

6 U.S.—Cuyahoga Metropolitan Housing Authority v. City of Cleveland, 342 F. Supp. 250, 65 Ohio Op. 2d 227 (N.D. Ohio 1972), judgment aff'd, 474 F.2d 1102 (6th Cir. 1973).

N.J.—City of Paterson v. Housing Authority of City of Paterson, 96 N.J. Super. 394, 233 A.2d 98 (Law Div. 1967).

7 U.S.—Appleby v. Delaney, 271 U.S. 403, 46 S. Ct. 581, 70 L. Ed. 1009 (1926).

N.J.—Ingannamort v. City of Hackensack, 134 N.J.L. 103, 45 A.2d 896 (N.J. Sup. Ct. 1946).

8 Mass.—Opinion of the Justices to the Senate, 369 Mass. 979, 338 N.E.2d 806 (1975).

Nev.—City of Reno v. Goldwater, 92 Nev. 698, 558 P.2d 532 (1976).

9 U.S.—Superior Water, Light & Power Co. v. City of Superior, 263 U.S. 125, 44 S. Ct. 82, 68 L. Ed. 204 (1923).

Nev.—City of North Las Vegas v. Central Tel. Co., 85 Nev. 620, 460 P.2d 835 (1969).

As to the impairment of a franchise for the use of streets for certain purposes generally, see § 539.

10 U.S.—Faitoute Iron & Steel Co. v. City of Asbury Park, N.J., 316 U.S. 502, 62 S. Ct. 1129, 86 L. Ed. 1629 (1942).

Resolution adopted by airport commission

A resolution adopted by a city/county airport commission pursuant to constitutional police power, providing incentives to drivers of clean-air taxis which served an airport, as part of an experimental program which modified the regulatory framework for taxicabs, did not constitute an enforceable contract with the drivers who purchased clean-air taxis as would allegedly preclude the commission from reducing those incentives; there was no intent to grant private rights of contract, no promise to pay for services rendered, and no vested right to compensation upon performance.

Cal.—Cotta v. City and County of San Francisco, 157 Cal. App. 4th 1550, 69 Cal. Rptr. 3d 612 (1st Dist. 2007).

Control of parking authority

Amendments to a statute that transferred control of the parking authority from the city to the commonwealth and the governor did not violate a constitutional prohibition of impairment of contract; the city did not have

a contractual right to the method and manner of appointment of the members of the city parking authority, or its procedural organization, by statute.

Pa.—City of Philadelphia v. Schweiker, 817 A.2d 1217 (Pa. Commw. Ct. 2003), order aff'd, 579 Pa. 591, 858 A.2d 75 (2004).

11 Ill.—Bossert v. Granary Creek Union Drainage Dist. No. 1, 307 Ill. 425, 138 N.E. 726 (1923).

Mich.—Devormer v. City Commission of Grand Rapids, 293 Mich. 592, 292 N.W. 677 (1940).

Certification requirement

A statute requiring fully regulated common motor carriers to obtain certification from Transportation Services Authority (TSA) did not constitute a law impairing the obligation of contracts in violation of moving truck company's state constitutional rights as none of company's contracts existed prior to the enactment of the relevant statutory provisions.

Nev.—Fathers & Sons & A Daughter Too v. Transportation Services Authority of Nevada, 124 Nev. 254, 182 P.3d 100 (2008).

Waiver of lien

A statute prohibiting a waiver of mechanics' lien rights was not unconstitutional as a statutory impairment of contract between a city and a contractor on the city's street reconstruction project since the statute predated the lien waiver agreement in that contract.

Ill.—R.W. Dunteman Co. v. C/G Enterprises, Inc., 181 Ill. 2d 153, 229 Ill. Dec. 533, 692 N.E.2d 306 (1998).

12 Ky.—Veail v. Louisville and Jefferson County Metropolitan Sewer Dist., 303 Ky. 248, 197 S.W.2d 413 (1946).

Okla.—Chastain v. Oklahoma City, 1953 OK 166, 208 Okla. 604, 258 P.2d 635 (1953).

13 Ind.—Evansville-Vanderburgh School Corp. v. Moll, 264 Ind. 356, 344 N.E.2d 831 (1976).

14 U.S.—Detroit United Ry. v. City of Detroit, 255 U.S. 171, 41 S. Ct. 285, 65 L. Ed. 570 (1921); Detroit United Ry. v. City of Detroit, 229 U.S. 39, 33 S. Ct. 697, 57 L. Ed. 1056 (1913).

15 U.S.—Buffalo & J.R. Co. v. Falconer, 103 U.S. 821, 26 L. Ed. 471, 1880 WL 18899 (1880).

La.—Louisiana Western R. Co. v. City of Crowley, 142 La. 640, 77 So. 486 (1917).

16 La.—Bisso v. Morgan City, 169 La. 122, 124 So. 308 (1929).

17 Ky.—State Highway Com'n v. County Bd. of Educ. of Henderson County, 264 Ky. 95, 94 S.W.2d 302 (1936).

18 W. Va.—City of Charleston v. Public Service Commission, 86 W. Va. 536, 103 S.E. 673 (1920).

19 Neb.—The Lamar Co., LLC v. City of Fremont, 278 Neb. 485, 771 N.W.2d 894 (2009).

Impairment not shown

A city did not impair its obligations, in violation of the Contract Clause, under the "best efforts" clause of contracts with lessees of residential condominium units whereby the city was to convey fee simple interests in the units to the lessees, by repealing a leasehold conversion ordinance which would have permitted the city to exercise eminent domain to condemn and acquire the units for resale to the lessees; the contracts obligated the city to use its best efforts only in pursuing condemnation, which required approval by the city council, and the city maintained no further duties under the contracts if the city council chose not to approve condemnation as in the public interest, which was precisely the determination made by the city council when it deferred action on the city's resolution to condemn the lessees' units and instead repealed the leasehold conversion ordinance.

U.S.—Ching Young v. City and County of Honolulu, 639 F.3d 907 (9th Cir. 2011).

Substantial impairment shown

A city's resolution purporting to rescind a prior resolution providing the mayor with authority to enter into lease agreements with an energy company for the installation, maintenance, and service of gas wells constituted the total destruction of the company's leases with city mayor, and thus, the second resolution constituted a substantial impairment of the leases in violation of the Contract Clauses of the state and federal constitutions notwithstanding the city's arguments that its right to reject proposed drilling sites made the lease contingent and that it passed the second resolution in the exercise of its police power; both resolutions contained language referring to the city's power to protect public health, welfare, and safety; the second resolution destroyed the object of the lease; and the company had reasonable expectations under the leases due to its expenditures in anticipation of drilling.

Ohio—Bass Energy Inc. v. Highland Hts., 193 Ohio App. 3d 725, 2010-Ohio-2102, 954 N.E.2d 130 (8th Dist. Cuyahoga County 2010).

20 U.S.—Rorick v. Board of Com'rs of Everglades Drainage Dist., 57 F.2d 1048 (N.D. Fla. 1932).
Ky.—Dunn v. Hart, 290 Ky. 764, 162 S.W.2d 767 (1942).

21 Va.—Commonwealth ex rel. City of Portsmouth v. Portsmouth Gas Co., 132 Va. 480, 112 S.E. 792 (1922).

22 U.S.—Horwitz-Matthews, Inc. v. City of Chicago, 78 F.3d 1248 (7th Cir. 1996).
Ark.—Morgan Const. Co. v. Pitts, 154 Ark. 420, 242 S.W. 812 (1922).

23 U.S.—Northern Pac. Ry. Co. v. State of Minn., 208 U.S. 583, 28 S. Ct. 341, 52 L. Ed. 630 (1908).

24 U.S.—Shawnee Sewerage & Drainage Co. v. Stearns, 220 U.S. 462, 31 S. Ct. 452, 55 L. Ed. 544 (1911).
Cal.—Teachers Management & Inv. Corp. v. City of Santa Cruz, 64 Cal. App. 3d 438, 134 Cal. Rptr. 523 (1st Dist. 1976).

25 U.S.—Cherry v. Mayor and City Council of Baltimore City, 762 F.3d 366 (4th Cir. 2014), cert. denied, 135 S. Ct. 768, 190 L. Ed. 2d 641 (2014).

26 U.S.—Taylor v. City of Gadsden, 767 F.3d 1124 (11th Cir. 2014); Crosby v. City of Gastonia, 682 F. Supp. 2d 537 (W.D. N.C. 2010), judgment aff'd, 635 F.3d 634 (4th Cir. 2011).

Unilateral termination

A county's unilateral termination of contracts to provide paratransit services to disabled persons constituted a claim for breach of contract, not a violation of the Contract Clause, since the county did not insulate itself from paying damages in an action for breach of contract.

U.S.—Handi-Van Inc. v. Broward County Fla., 445 Fed. Appx. 165 (11th Cir. 2011).

End of Document

16A C.J.S. Constitutional Law § 537

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

3. Contracts Entered into by Municipalities

a. General Considerations

§ 537. Contracts between taxpayer or elector and bondholder

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2669, 2680, 2681, 2685, 2688 to 2692, 2695 to 2699, 2701, 2704, 2726

As a general rule, bonds issued under improvement acts are in some jurisdictions deemed to constitute protected contracts between the landowners, taxpayers, or electors on the one hand and the bondholders on the other.

It has been held that the taxpayers or voters of a municipality are not parties to contracts in the form of bonds or warrants issued by it, and, therefore, no contract made by them can be said to be impaired by a statute affecting the terms thereof.[1] However, bonds issued under improvement acts are in some jurisdictions deemed to constitute protected contracts between the landowners, taxpayers, or electors on the one hand and the bondholders on the other.[2] Where the latter rule prevails, the rights of the landowner, taxpayer, or voter are not impaired by a statute changing the method of taxation[3] or the personnel of the officers administering the funds derived from the tax levy or sale of bonds.[4]

There is no impairment of contract rights by a statute providing that interest on the bonds during the construction period should be considered a construction cost payable from the proceeds of the sale of the bonds for a period of one year after completion of

the construction,[5] or authorizing the district to issue refunding bonds on the vote of a majority of the electors, the original bonds having been issued pursuant to a statute calling for such vote.[6] Furthermore, such rights are not impaired by the municipality's issuance, in accordance with statutory authority, of general bonds to refund the bonds of a district therein even though the taxpayer may be subject to an additional tax to pay the refunding bonds,[7] particularly where the owners of a majority in area of the land within the district file written consents approving the reassessment plan and the refunding of the bonds.[8]

It has been held, however, that the landowner's rights are impaired by an act which subjects the landowner to burdens not imposed on the landowner at the time the original bonds were issued,[9] as, for example, a provision for a larger assessment than that originally agreed on,[10] additional taxes,[11] foreclosure in a court action by the bondholder,[12] or a reduced period of redemption, together with foreclosure expenses.[13]

Footnotes

1 U.S.—Everglades Drainage Dist. v. Florida Ranch & Dairy Corporation, 74 F.2d 914 (C.C.A. 5th Cir. 1935).
N.D.—Walstad v. Dawson, 64 N.D. 333, 252 N.W. 64 (1934).

2 Cal.—Consolidated Fire Protection Dist. of Los Angeles County v. Howard Jarvis Taxpayers' Ass'n, 63 Cal. App. 4th 211, 73 Cal. Rptr. 2d 586 (2d Dist. 1998).
Idaho—Straus v. Ketchen, 54 Idaho 56, 28 P.2d 824 (1933).
As to rights of bondholders, see § 540.

3 Cal.—Palo Verde Irr. Dist. v. Seeley, 198 Cal. 477, 245 P. 1092 (1926).

4 Cal.—California Highway Commission v. Ballard, 77 Cal. App. 404, 247 P. 527 (3d Dist. 1926).

5 Cal.—Metropolitan Water Dist. of Southern Cal. v. Toll, 1 Cal. 2d 421, 35 P.2d 519 (1934).

6 Cal.—Mulcahy v. Baldwin, 216 Cal. 517, 15 P.2d 738 (1932).

7 Cal.—City of Dunsmuir v. Porter, 7 Cal. 2d 269, 60 P.2d 836 (1936).

8 Cal.—Los Angeles County v. Jones, 6 Cal. 2d 695, 59 P.2d 489 (1936).

9 Cal.—San Diego County v. Childs, 217 Cal. 109, 17 P.2d 734 (1932).
Idaho—Straus v. Ketchen, 54 Idaho 56, 28 P.2d 824 (1933).

10 Cal.—Hershey v. Cole, 130 Cal. App. 683, 20 P.2d 972 (3d Dist. 1933).

11 Idaho—Oregon Short Line R. Co. v. Berg, 52 Idaho 499, 16 P.2d 373 (1932).

12 Cal.—Capital Bond & Investment Co. v. Hood, 218 Cal. 729, 24 P.2d 765 (1933).

13 Cal.—Los Angeles County v. Rockhold, 3 Cal. 2d 192, 44 P.2d 340, 100 A.L.R. 149 (1935).

End of Document

16A C.J.S. Constitutional Law § 538

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

3. Contracts Entered into by Municipalities

a. General Considerations

§ 538. Licenses or permits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2700

Licenses are not protected by the constitutional provision against the impairment of contracts.

Since a license is not a contract, a license or permit granted by a city to engage in a particular profession or business for a certain time is subject to revocation by legislative act before the time stated.[1] It is presumed, absent unequivocal language, that a city, in granting a license, reserves the ability to exercise its police power and place additional regulatory burdens on license holders.[2]

Any interference with rights subsequent to the issuance of the license, which were within the contemplation of the contract of the parties, is not an impairment of the contract.[3]

Building permits.

A municipal permit is not a contract.[4] Hence, a building permit is not protected by the constitutional prohibition against impairment of contract obligations.[5]

Footnotes

1 Ga.—City of Mountain View v. Clayton County, 242 Ga. 163, 249 S.E.2d 541 (1978).
Ill.—Contemporary Music Group, Inc. v. Chicago Park Dist., 57 Ill. App. 3d 182, 14 Ill. Dec. 703, 372 N.E.2d 982 (1st Dist. 1978).

2 U.S.—Kennedy v. Hughes, 596 F. Supp. 1487 (D. Del. 1984).
Sidewalk vendors
Vending licenses issued to sidewalk vendors did not give them an enforceable contract right to continue to vend in a city center area, such that a subsequent ordinance limiting the number of vendors in that area unconstitutionally impaired the vendors' contract rights.
U.S.—Lindsay v. City of Philadelphia, 863 F. Supp. 220 (E.D. Pa. 1994).

3 **Rate regulation of community television antenna licensee**
Cal.—City of Lafayette v. American Television & Communication Corp., 98 Cal. App. 3d 27, 159 Cal. Rptr. 271 (1st Dist. 1979).

4 C.J.S., Municipal Corporations § 225.

5 Miss.—Dart v. City of Gulfport, 147 Miss. 534, 113 So. 441 (1927).
Ohio—State ex rel. Ohio Hair Products Co. v. Rendigs, 98 Ohio St. 251, 120 N.E. 836 (1918).
Permit to connect with sewer
Me.—Baxter v. Waterville Sewerage Dist., 146 Me. 211, 79 A.2d 585 (1951).

16A C.J.S. Constitutional Law § 539

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

3. Contracts Entered into by Municipalities

a. General Considerations

§ 539. Right to use streets

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2715

Subject to the exercise of the police power and to conditions imposed by general statutes or the contract itself, a municipality's contract granting the right to use its streets cannot be impaired without the consent of the parties.

A valid contract or franchise granted by a municipality for the use of the streets for certain purposes is protected by the constitutional provision against impairment by the state or any of its agencies[1] whether in the form of constitutional provisions,[2] legislative enactments,[3] charter provisions,[4] or municipal ordinances.[5] However, such a contract is subject to conditions imposed by general statutes[6] or by its own terms,[7] and to modification by consent of the parties.[8] The contract is also subject to the exercise of the police power by the state[9] and municipality.[10]

Furthermore, a city may, without impairing any contractual obligations, require a company to remove its tracks or other property from the streets where the company has enjoyed the full term of its franchise,[11] even though it holds a certificate of convenience

and necessity from the state,[12] or where there exists no contract but a mere license or privilege to occupy without agreement as to time.[13] A mere license to use the street is not protected by the constitutional provision against the impairment of contracts.[14]

Payment for the use of streets cannot be required of a person or company to whom a franchise has been granted for their use without such payment,[15] but the grant of a franchise does not preclude the city from thereafter imposing a license or privilege tax on the grantee.[16] A city ordinance increasing the amount that a telecommunications company owed to it for the use of its rights-of-way violated the Contract Clause, rendering it void ab initio, where the city had previously enacted an ordinance that irrevocably committed it to set terms of compensation from the company, and the new ordinance attempted to alter those terms.[17]

Footnotes

1 Ga.—Gas Light Co. of Columbus v. Town of Bibb City, 253 Ga. 498, 322 S.E.2d 250 (1984).
Franchise silent as to term
A franchise silent as to the term of its life is entitled to constitutional protection.
U.S.—Ohio Public Service Co. v. State of Ohio ex rel. Fritz, 274 U.S. 12, 47 S. Ct. 480, 71 L. Ed. 898, 5 Ohio L. Abs. 377 (1927); Northern Ohio Traction & Light Co. v. State of Ohio ex rel. Pontius, 245 U.S. 574, 38 S. Ct. 196, 62 L. Ed. 481 (1918).

2 Mich.—Michigan Public Service Co. v. City of Cheboygan, 324 Mich. 309, 37 N.W.2d 116 (1949).

3 Ind.—Winfield v. Public Service Commission of Indiana, 187 Ind. 53, 118 N.E. 531 (1918).
Mass.—Boston Elevated Ry. Co. v. Com., 310 Mass. 528, 39 N.E.2d 87 (1942).
Utility
A utility company having telephone and cable television lines within a city did not suffer a taking and was due no compensation, nor was its contract through an 1877 Law allowing it to maintain its facilities on public roadways impaired in the constitutional sense, by the city requiring it to pay the cost of relocating its facilities when they interfered with a public purpose; the utility continued to enjoy its franchise right under the law to operate in the city, but it had no permanent right to any given location for its facilities.
Ariz.—Qwest Corp. v. City of Chandler, 222 Ariz. 474, 217 P.3d 424 (Ct. App. Div. 1 2009).

4 Wash.—Pacific Tel. & Tel. Co. v. City of Everett, 97 Wash. 259, 166 P. 650 (1917).

5 U.S.—Southern California Gas Co. v. City of Santa Ana, 336 F.3d 885 (9th Cir. 2003); XO Missouri, Inc. v. City of Maryland Heights, 256 F. Supp. 2d 966 (E.D. Mo. 2002).

6 Cal.—San Francisco-Oakland Terminal Rys. v. Alameda County, 66 Cal. App. 77, 225 P. 304 (1st Dist. 1924).
W. Va.—Town of Mason v. Ohio River R. Co., 51 W. Va. 183, 41 S.E. 418 (1902).

7 Ill.—Peoples Gas Light & Coke Co. v. City of Chicago, 413 Ill. 457, 109 N.E.2d 777 (1952).
Wis.—State v. Milwaukee Electric Ry. & Light Co., 165 Wis. 230, 161 N.W. 745 (1917).
Reservation in ordinance
Since an electric company in accepting a franchise agreed to a reservation in an ordinance of the right of the city to direct the relocation of electric distribution facilities installed in the street, the action of the city in directing the relocation of facilities after vacation of the street did not impair an obligation of contract.
Mo.—Union Elec. Co. v. Land Clearance For Redevelopment Authority of City of St. Louis, 555 S.W.2d 29 (Mo. 1977).

8 Mass.—Browne v. Turner, 176 Mass. 9, 56 N.E. 969 (1900).

9 Ill.—City of Geneseo v. Illinois Northern Utilities Co., 363 Ill. 89, 1 N.E.2d 392 (1936).
Mass.—Boston Elevated Ry. Co. v. Com., 310 Mass. 528, 39 N.E.2d 87 (1942).
Okla.—Kansas City Southern Ry. Co. v. Citizens of Westville, 1938 OK 569, 184 Okla. 100, 89 P.2d 320 (1938).

10 U.S.—Denver & R.G.R. Co. v. City and County of Denver, 250 U.S. 241, 39 S. Ct. 450, 63 L. Ed. 958 (1919); BellSouth Telecommunications, Inc. v. City of Mobile, 171 F. Supp. 2d 1261 (S.D. Ala. 2001).

11 U.S.—Detroit United Ry. v. City of Detroit, 255 U.S. 171, 41 S. Ct. 285, 65 L. Ed. 570 (1921); Detroit United Ry. v. City of Detroit, 229 U.S. 39, 33 S. Ct. 697, 57 L. Ed. 1056 (1913).

12 Mo.—State ex inf. McKittrick ex rel. City of California v. Missouri Utilities Co., 339 Mo. 385, 96 S.W.2d 607, 106 A.L.R. 1169 (1936).

13 U.S.—Seaboard Air Line Ry. v. City of Raleigh, 242 U.S. 15, 37 S. Ct. 8, 61 L. Ed. 121 (1916).

14 Mass.—Boston Elevated Ry. Co. v. Com., 310 Mass. 528, 39 N.E.2d 87 (1942).

Va.—Joyner v. Matthews, 193 Va. 10, 68 S.E.2d 127 (1951).

Taxicab business

Cal.—O'Connor v. Superior Court, 90 Cal. App. 3d 107, 153 Cal. Rptr. 306 (1st Dist. 1979).

15 Ill.—City of Springfield v. Springfield Consol. Ry. Co., 208 Ill. App. 11, 1917 WL 2800 (3d Dist. 1917), cert. denied.

Wash.—Puget Sound Independent Telephone Co. v. City of Everett, 97 Wash. 699, 166 P. 655 (1917).

Excavation

A municipal ordinance requiring advance payment by anyone wishing to perform excavations or trench cuts substantially impaired a gas utility's rights under a prior franchise agreement, for the purpose of determining the ordinance's constitutionality under the Contract Clause; the ordinance sought additional fees and imposed them without regard to the quality of the utility's repair work.

U.S.—Southern California Gas Co. v. City of Santa Ana, 336 F.3d 885 (9th Cir. 2003).

16 U.S.—Puget Sound Power & Light Co. v. City of Seattle, Wash., 291 U.S. 619, 54 S. Ct. 542, 78 L. Ed. 1025 (1934).

Miss.—State ex rel. Rice v. City Bus Co., 176 Miss. 597, 169 So. 774 (1936).

17 U.S.—Bell South Telecommunications, LLC v. City of New Orleans, 31 F. Supp. 3d 819 (E.D. La. 2014).

End of Document

16A C.J.S. Constitutional Law § 540

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

3. Contracts Entered into by Municipalities

b. Rights of Municipal Creditors

§ 540. Substance of right must not be impaired

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2681, 2683, 2685, 2687, 2704

Although the rights of existing municipal creditors who have dealt with the municipality in its local or private character must not be impaired, statutory changes which do not tend to defeat or postpone the creditors' right to be paid their money when due are not unconstitutional.

The power of the legislature to interfere with contracts to which a municipal corporation is a party is subject to the limitation that the substance of rights of existing municipal creditors who have dealt with it in its local or private character must not be impaired.[1] Thus, legislation under which bonds or other evidences of indebtedness are issued and which provides for their payment and furnishes some measure of security therefor becomes a constituent part of the creditors' contract, the obligation of which cannot be impaired, or its fulfillment hampered, by subsequent legislation of the state or municipality.[2] In such a connection, the obligation of contract in the constitutional sense has been defined as the means provided by law by which it can be enforced[3] or what the municipality has undertaken to perform.[4] The contractual obligations in municipal bonds protected by the constitutional Contract Clause include the terms in the municipal bonds, the official statement, the authorizing resolutions, and the statutory provisions governing the applicable municipal corporation in existence when the bonds were issued and

sold.[5] When assessing the impairment of a municipal bond contract under the constitutional Contract Clause, the contract is substantially impaired when the legislation detrimentally affects the financial framework which induced the bondholders to originally purchase the bonds, without providing alternative or additional security.[6]

No contract rights of bondholders are impaired by mere changes in the personnel of administrative officers[7] or changes in administrative details which place no undue burden on such bondholders.[8] Thus, contract rights are not impaired by a statute increasing the municipality's power to borrow money and contract debts.[9] In addition, no contract rights of bondholders are impaired by a statute providing for an adjustment or composition of the claims of creditors of a municipality.[10]

Change in value or rating of general obligation bonds.

For purposes of determining whether a statute impairs a public contract between a municipal corporation and its bondholders, a mere change in the value or rating of outstanding general obligation bonds is not, by itself, sufficient to prove an impairment of contract.[11] Rather, the relevant question is whether the legislation detrimentally affects the financial framework that induced the bondholders originally to purchase the bonds.[12]

Footnotes

1 Fla.—State v. City of Coral Gables, 72 So. 2d 48 (Fla. 1954).
Tex.—Norton v. Kleberg County, 149 Tex. 261, 231 S.W.2d 716 (1950).
Economically sound expansion plan not impairment
Ky.—Wilson v. City of Henderson, 461 S.W.2d 90 (Ky. 1970).

2 Ala.—Newberry v. City of Andalusia, 257 Ala. 49, 57 So. 2d 629 (1952).
S.D.—Meierhenry v. City of Huron, 354 N.W.2d 171 (S.D. 1984).
Municipal bonds
Municipal bonds are "contractual obligations" protected by the Contract Clause.
Wash.—Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).

3 U.S.—Louisiana v. City of New Orleans, 102 U.S. 203, 26 L. Ed. 132, 1880 WL 18735 (1880).
N.J.—Hourigan v. North Bergen Tp., 113 N.J.L. 143, 172 A. 193 (N.J. Ct. Err. & App. 1934).

4 Fla.—State v. Citrus County, 116 Fla. 676, 157 So. 4, 97 A.L.R. 431 (1934).

5 Wash.—Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).

6 Wash.—Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).

7 U.S.—Rorick v. Board of Com'rs of Everglades Drainage Dist., 57 F.2d 1048 (N.D. Fla. 1932).
Fla.—State v. Johnson, 107 Fla. 624, 145 So. 880 (1933).

8 Fla.—State v. Johnson, 107 Fla. 624, 145 So. 880 (1933).

9 Mich.—Harsha v. City of Detroit, 261 Mich. 586, 246 N.W. 849, 90 A.L.R. 853 (1933).

10 U.S.—Faitoute Iron & Steel Co. v. City of Asbury Park, N.J., 316 U.S. 502, 62 S. Ct. 1129, 86 L. Ed. 1629 (1942).

11 Wash.—Tyrpak v. Daniels, 124 Wash. 2d 146, 874 P.2d 1374 (1994).

12 Wash.—Tyrpak v. Daniels, 124 Wash. 2d 146, 874 P.2d 1374 (1994).

16A C.J.S. Constitutional Law § 541

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

3. Contracts Entered into by Municipalities

b. Rights of Municipal Creditors

§ 541. Diversion of fund created for particular purpose

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2681, 2683, 2685, 2687

The diversion of a fund created for the payment of a particular debt according to the terms of the creditor's contract constitutes an unlawful impairment of the contract of the creditor.

A fund set apart for the payment of a debt according to the provisions of the act under which the debt was contracted may not be diverted from such purpose by a subsequent statute or ordinance.[1] However, a diversion of part of the fund is not unlawful if the fund is not reduced below its primary uses so as to endanger prompt payment of the debt.[2] Furthermore, a plan which does not divert any part of a fund is not invalid.[3] A statute providing for the creation of a sinking fund for the payment of bondholders becomes a part of the contract between the city and its bondholders and cannot subsequently be changed to their detriment.[4] Statutes authorizing the use of such funds for other purposes will be held not to authorize such use to the prejudice of the bondholders.[5]

The rights of creditors under one bond issue of a municipality are not, however, impaired by an act authorizing a subsequent issue of bonds even though both are to be paid out of the same fund.[6] The second issue may even be made a first charge on the fund if the act authorizing the first issue made no appropriation of the fund for its payment.[7] However, a statute authorizing the issuance of new bonds superior in obligation and privilege to outstanding bonds is unconstitutional where the statute under which the latter were issued authorizes additional bonds merely of equal dignity.[8]

Footnotes

1 U.S.—Rorick v. Board of Com'rs of Everglades Drainage Dist., 57 F.2d 1048 (N.D. Fla. 1932).
Ala.—Water Works Bd. of City of Leeds v. Huffstutler, 292 Ala. 669, 299 So. 2d 268 (1974).

2 Fla.—Flint v. Duval County, 126 Fla. 18, 170 So. 587 (1936).

3 Fla.—Broward County v. Hurwit, 216 So. 2d 225 (Fla. 4th DCA 1968).

4 Cal.—Sutter Basin Corp. v. Brown, 40 Cal. 2d 235, 253 P.2d 649 (1953).
No impairment
Tex.—Edgewood Independent School Dist. v. Meno, 917 S.W.2d 717, 108 Ed. Law Rep. 1310 (Tex. 1995), as modified, (Feb. 16, 1995).

5 U.S.—Rorick v. Board of Com'rs of Everglades Drainage Dist., 57 F.2d 1048 (N.D. Fla. 1932).

6 U.S.—Board of Liquidation of City Debt of New Orleans v. State of Louisiana, 179 U.S. 622, 21 S. Ct. 263, 45 L. Ed. 347 (1901).
Fla.—State v. City of Jacksonville, 131 Fla. 163, 179 So. 172 (1938).
Tax increment financing plan
A tax increment financing law, authorizing cities to incur indebtedness to revitalize blighted and deteriorating areas within the cities, and a city ordinance adopted under that law, authorizing a tax increment financing plan for the redevelopment of waterfront property within a city, did not impair the obligation of contract rights by allegedly diverting the increased revenue that would otherwise have been available for the retirement of general obligation bonds issued by the city, in that, under tax increment financing, the same tax base was available for the retirement of general obligation bonds during the redevelopment project as was available before the redevelopment bonds were issued.
S.C.—Wolper v. City Council of City of Charleston, 287 S.C. 209, 336 S.E.2d 871 (1985).

7 N.C.—Brockenbrough v. Board of Water Com'rs of City of Charlotte, 134 N.C. 1, 46 S.E. 28 (1903).

8 U.S.—Rorick v. Board of Com'rs of Everglades Drainage Dist., 27 F.2d 377 (N.D. Fla. 1928).

16A C.J.S. Constitutional Law § 542

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

3. Contracts Entered into by Municipalities

b. Rights of Municipal Creditors

§ 542. Change in territory or organization of municipality

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2681, 2683, 2685, 2687

It is within the power of the legislature to change the organization or government of municipal corporations, provided it does not impair the obligation of existing contracts.

Notwithstanding any contracts they may have entered into with private individuals, it is within the power of the legislature to change the organization or government of municipal corporations[1] and even to abolish them entirely.[2] However, it may not impair the obligation of existing contracts[3] or deprive creditors of a municipality of their right to subject to the payment of their debts property owned by it in its private capacity.[4]

The obligation of a municipal corporation on its existing debts is not affected by the detachment of territory from it.[5] The detached area remains liable for its proportionate share of such indebtedness[6] even though it has been attached to another municipal corporation.[7] Where two or more municipal corporations are consolidated, or the entire territory of one municipal corporation is annexed to another, the contracts and indebtedness of the corporations that are consolidated or annexed become

the contracts and indebtedness of the consolidated or annexing corporation.[8] With respect to the question of impairment of contract obligation, on the incorporation of a new municipality including substantially the same territory or inhabitants as the old, the obligations of the old devolve on the new.[9] The disconnecting of lands from a municipality does not impair the contract of one who became a creditor of the municipality when a statute authorizing the detachment of such territory was in force.[10]

Footnotes

1 Cal.—Williams v. City of Stockton, 195 Cal. 743, 235 P. 986 (1925).
Tex.—City of Pelly v. Harris County Water Control & Imp. Dist. No. 7, 145 Tex. 443, 198 S.W.2d 450 (1946).

2 Colo.—Alpha Corporation v. Denver-Greeley Valley Irr. Dist., 110 Colo. 179, 132 P.2d 448 (1942).
Fla.—State ex rel. Garrett v. Whitehurst, 122 Fla. 484, 165 So. 691 (1936).
N.D.—Sitte v. Paulson, 56 N.D. 146, 216 N.W. 344 (1927).

3 Ark.—Chicago Title & Trust Co. v. Hagler Special School Dist., 178 Ark. 443, 12 S.W.2d 881 (1928).
Tex.—Burns v. Dilley County Line Independent School Dist., 295 S.W. 1091 (Tex. Comm'n App. 1927).

4 U.S.—Meriwether v. Garrett, 102 U.S. 472, 26 L. Ed. 197, 1880 WL 18841 (1880).

5 Fla.—Sholtz v. State ex rel. Winters, 121 Fla. 278, 163 So. 710 (1935).

6 Tex.—Tisdale v. Eldorado Independent School Dist., 287 S.W. 147 (Tex. Civ. App. Austin 1926), writ granted, (Dec. 15, 1926) and aff'd, 3 S.W.2d 420 (Tex. Comm'n App. 1928).

7 S.C.—Walpole v. Wall, 153 S.C. 106, 149 S.E. 760 (1929).

8 C.J.S., Municipal Corporations § 96.

9 N.C.—Smith-Courtney Co. v. Board of Road Com'rs of Hertford County, 182 N.C. 149, 108 S.E. 443 (1921).
Tex.—Gerhardt v. Yorktown Independent School Dist., 252 S.W. 197 (Tex. Civ. App. Galveston 1923).

10 U.S.—McCombs v. West, 155 F.2d 601 (C.C.A. 5th Cir. 1946).
Ill.—Roberts Park Fire Protection Dist. v. Village of Bridgeview, 61 Ill. 2d 429, 337 N.E.2d 8 (1975).

16A C.J.S. Constitutional Law § 543

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

3. Contracts Entered into by Municipalities

b. Rights of Municipal Creditors

§ 543. Levy and collection of taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2681, 2683, 2685, 2687, 2697, 2698, 2703, 2704

The power or duty of a municipality to levy and collect taxes pledged to pay outstanding contracts cannot be affected so as to hinder, delay, or defraud its creditors.

The power or duty of a municipality to levy taxes, existing at the date of the contract and relied on as security by the creditor, cannot be so affected as to impair the obligation of the creditors' contract.[1] However, statutes making changes in the tax laws impair no rights of creditors to whom no taxes have been pledged, either expressly or impliedly, for the payment of their debts.[2] Statutory changes which do not defeat or postpone the creditors' right to be paid their money when due are not invalid,[3] such as those which are not applicable to bonds previously issued.[4] Mere legislative permission to apply revenue to the payment of a certain debt does not constitute an appropriation of such revenue to that purpose or deprive the legislature of the power to direct the application of such revenue to other purposes.[5]

Statutes or ordinances authorizing issuance of bonds and levying taxes to pay them or directing such taxes to be levied constitute a part of the bondholders' contract which cannot be impaired by withdrawing the tax legislation, reducing the taxes or diverting the proceeds to some other purpose.[6] Furthermore, the legislature cannot, to the substantial detriment of the contract of creditors or bondholders and without their consent, materially change the procedure for enforcing the lien of such taxes[7] or the terms and conditions of payment,[8] as by changing the law requiring the payment of taxes in money, which was in effect at the date of the contract, to permit the municipality to accept its bonds and past-due interest coupons in payment.[9]

However, a charter amendment authorizing payment of special assessments for improvements with bonds issued to pay for such improvements, but which also constitute general obligations of the city, does not impair the obligation of the bonds.[10] Statutes providing for redemption of land sold for taxes by installment payments are not invalid since the purpose of the deferred payments is to pay off bonds issued on the credit of such taxes and not to defeat their payment.[11]

Refunding bonds creating no new debts but constituting merely renewals or extensions of the original bonds are entitled to the benefit of the same taxing power as protected and formed a part of the obligation of the original bonds.[12] A constitutional or statutory provision limiting tax levies adopted after the issuance of the original bonds is inoperative as to refunding bonds issued thereafter.[13]

The statute being attacked must have a tendency to destroy or materially reduce the taxing power of the municipal corporation that has pledged the payment of a debt, before such act can be said to contravene the constitution.[14] Moreover, the repeal or limiting of laws authorizing the levy of a tax to pay municipal bonds or other evidences of indebtedness is not invalid where there are other adequate means provided for that purpose.[15]

A statute merely clarifying an ambiguity in an earlier law and declaring the law as it previously existed is not unconstitutional.[16] Neither is a statute increasing taxes[17] or providing for gratuitous distribution of state funds to local improvement districts for retirement of district bonds,[18] or an amendment of the statute providing for the collection of taxes, which does not substantially change the procedure for enforcing the tax lien,[19] or an amendment calculated merely to enable a landowner to pay bond fund taxes before they become due.[20] No impairment of contracts occurs in connection with a tax allocation financing scheme under which the benefit of any tax revenues which would have otherwise been available are not lost.[21]

Footnotes

1 U.S.—Yell County, Ark. v. Gillespie, 87 F.2d 944 (C.C.A. 8th Cir. 1937).
La.—Dantoni v. Board of Levee Com'rs of Orleans Levee Dist., 227 La. 575, 80 So. 2d 81 (1955).
Mich.—Ziegler v. Witherspoon, 331 Mich. 337, 49 N.W.2d 318 (1951).

2 Mo.—State ex rel. City of Sedalia v. Weinrich, 291 Mo. 461, 236 S.W. 872 (1921).
N.Y.—Quirk v. Municipal Assistance Corp. for City of New York, 41 N.Y.2d 644, 394 N.Y.S.2d 842, 363 N.E.2d 549 (1977).

3 Ohio—State ex rel. City of South Euclid v. Zangerle, 145 Ohio St. 433, 31 Ohio Op. 57, 62 N.E.2d 160 (1945).

4 **County charter amendment**
Md.—Pickett v. Prince George's County, 291 Md. 648, 436 A.2d 449 (1981).

5 U.S.—U.S. v. Thoman, 156 U.S. 353, 15 S. Ct. 378, 39 L. Ed. 450 (1895).

6 Minn.—Davies v. City of Minneapolis, 316 N.W.2d 498 (Minn. 1982).
Failure to remit proceeds

The failure of the state treasurer to remit the proceeds of a local motor vehicle excise tax to a municipality was an unconstitutional impairment of contract between the municipality and its bondholders where the value of the bonds, which represented the local funding required to begin a capital acquisition and improvement program, would be reduced as result of such failure.

Wash.—Municipality of Metropolitan Seattle v. O'Brien, 86 Wash. 2d 339, 544 P.2d 729 (1976).

7 U.S.—Hendrickson v. Creager, 245 U.S. 115, 38 S. Ct. 46, 62 L. Ed. 185 (1917); Hendrickson v. Apperson, 245 U.S. 105, 38 S. Ct. 44, 62 L. Ed. 178 (1917).

Fla.—State ex rel. Van Ingen v. Panama City, 126 Fla. 776, 171 So. 760 (1937).

8 U.S.—Wall v. McNee, 87 F.2d 768 (C.C.A. 5th Cir. 1937).

Utah—Salter v. Nelson, 85 Utah 460, 39 P.2d 1061 (1935).

9 U.S.—Wall v. McNee, 87 F.2d 768 (C.C.A. 5th Cir. 1937).

Okla.—Town of Medford ex rel. Fuss v. Early, 1944 OK 328, 194 Okla. 566, 153 P.2d 633 (1944).

Wis.—In re Cranberry Creek Drainage Dist., 202 Wis. 64, 231 N.W. 588, 85 A.L.R. 242 (1930).

10 Or.—Halderman v. City of Astoria, 140 Or. 160, 13 P.2d 358 (1932).

11 Cal.—Higbie v. Los Angeles County, 47 Cal. App. 2d 281, 117 P.2d 933 (4th Dist. 1941).

12 Fla.—Folks v. Marion County, 121 Fla. 17, 163 So. 298, 102 A.L.R. 659 (1935).

W. Va.—Keeney v. Kanawha County Court, 115 W. Va. 243, 175 S.E. 60 (1934).

13 N.C.—Bryson City Bank v. Town of Bryson City, 213 N.C. 165, 195 S.E. 398 (1938).

W. Va.—Keeney v. Kanawha County Court, 115 W. Va. 243, 175 S.E. 60 (1934).

14 Cal.—San Bernardino County v. Way, 18 Cal. 2d 647, 117 P.2d 354 (1941).

Ill.—Geweke v. Village of Niles, 368 Ill. 463, 14 N.E.2d 482, 117 A.L.R. 262 (1938).

La.—State ex rel. McGregor v. Diamond, 167 So. 760 (La. Ct. App. 2d Cir. 1936).

Okla.—Burroughs v. State ex rel. Com'rs of Land Office, 1944 OK 333, 195 Okla. 420, 158 P.2d 474, 159 A.L.R. 828 (1944).

S.C.—State ex rel. Edwards v. Query, 207 S.C. 500, 37 S.E.2d 241 (1946).

Property tax exemption

A property tax exemption of a port authority's lessees was not an implied term of contract between the authority and bond holders which could not be repealed without unconstitutionally impairing the obligation of the bonds.

Mass.—Opinion of the Justices, 365 Mass. 665, 313 N.E.2d 882 (1974).

15 La.—Board of Com'rs of Atchafalaya Basin Levee Dist. v. C. Lagarde Co., 167 La. 612, 120 So. 25 (1928).

Mass.—In re Opinion of the Justices, 297 Mass. 582, 9 N.E.2d 189 (1937).

16 U.S.—Garland Co. v. Filmer, 1 F. Supp. 8 (N.D. Cal. 1932).

Wis.—In re Dancy Drainage Dist., 199 Wis. 85, 225 N.W. 873 (1929).

17 U.S.—Everglades Drainage Dist. v. Florida Ranch & Dairy Corporation, 74 F.2d 914 (C.C.A. 5th Cir. 1935).

18 U.S.—Guardian Sav. & Trust Co. v. Dillard, 15 F.2d 996 (C.C.A. 8th Cir. 1926).

Ark.—Cone v. Hope-Fulton-Emmett Road Imp. Dist., 169 Ark. 1032, 277 S.W. 544 (1925).

19 U.S.—Ingraham v. Hanson, 297 U.S. 378, 56 S. Ct. 511, 80 L. Ed. 728 (1936).

Fla.—Bice v. Haines City, 142 Fla. 371, 195 So. 919 (1940).

Ind.—First Bank & Trust Co. of South Bend v. Ralston, 222 Ind. 584, 55 N.E.2d 115 (1944).

Utah—Millard County v. Millard County Drainage Dist., No. 1, 86 Utah 475, 46 P.2d 423 (1935).

20 Utah—Salter v. Nelson, 85 Utah 460, 39 P.2d 1061 (1935).

21 Colo.—Denver Urban Renewal Authority v. Byrne, 618 P.2d 1374 (Colo. 1980).

Ind.—South Bend Public Transp. Corp. v. City of South Bend, 428 N.E.2d 217 (Ind. 1981).

Tenn.—Metropolitan Development and Housing Agency v. Leech, 591 S.W.2d 427 (Tenn. 1979).

End of Document

16A C.J.S. Constitutional Law § 544

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

3. Contracts Entered into by Municipalities

b. Rights of Municipal Creditors

§ 544. Enactments providing remedies against municipality

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2697, 2698, 2703, 2704

Although mere changes in the form of the means of enforcement of municipal obligations may be valid if such remedies are changed a substantial equivalent must be provided.

The remedies for the enforcement of municipal obligations, which existed when the contract was made, must be left unimpaired by the legislature, or, if they are changed, a substantial equivalent must be provided.[1] Mere changes in the form of a provision for the means of enforcement or payment may be valid.[2] However, changes which impair substantially the enforcement of creditors' rights are unconstitutional,[3] whether or not designed to operate as an impairment.[4]

If a particular form of proceeding is prohibited, and another is left or is provided which affords an effective and reasonable mode of enforcing the right, the obligation of the contract is not impaired.[5] Furthermore, even substantial changes in the remedy are valid if made in proper exercise of the police power.[6] Preference will be given to that construction of a statute by which no substantial interference with the rights of creditors would result from its enforcement.[7]

Statutes establishing reasonable limitation periods where none had existed are not invalid as impairing the obligation of contracts.[8]

Footnotes

1 N.J.—Hourigan v. North Bergen Tp., 113 N.J.L. 143, 172 A. 193 (N.J. Ct. Err. & App. 1934).

2 U.S.—Louisiana v. City of New Orleans, 102 U.S. 203, 26 L. Ed. 132, 1880 WL 18735 (1880).
Or.—State ex rel. Mallicoat v. Coe, 254 Or. 365, 460 P.2d 357 (1969).

3 U.S.—W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935).
N.Y.—Flushing Nat. Bank v. Municipal Assistance Corp. for City of New York, 40 N.Y.2d 1088, 392 N.Y.S.2d 392, 360 N.E.2d 1075 (1977).

4 Fla.—City of Fort Lauderdale v. State ex rel. Elston Bank & Trust Co., 125 Fla. 89, 169 So. 584 (1936).

5 U.S.—Meyer v. City of Eufaula, Okl., 154 F.2d 943 (C.C.A. 10th Cir. 1946).
N.J.—Hourigan v. North Bergen Tp., 113 N.J.L. 143, 172 A. 193 (N.J. Ct. Err. & App. 1934).

6 N.J.—Hourigan v. North Bergen Tp., 113 N.J.L. 143, 172 A. 193 (N.J. Ct. Err. & App. 1934).

7 Iowa—Sampson v. City of Cedar Falls, 231 N.W.2d 609 (Iowa 1975).
Tex.—Norton v. Tom Green County, 182 S.W.2d 849 (Tex. Civ. App. Austin 1944), writ refused, (Dec. 13, 1944).

8 Cal.—Rand v. Bossen, 27 Cal. 2d 61, 162 P.2d 457 (1945).
Okla.—Shanks v. Blaine's Heirs, 1949 OK 94, 201 Okla. 350, 206 P.2d 978 (1949).

16A C.J.S. Constitutional Law § 545

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

4. Public Offices and Public Employment

§ 545. Constitutional protection of public employment as differing from protection of public offices

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2722 to 2724

Public offices may be abolished and their incidents affected by the adoption of a new constitution or of an amendment to an existing constitution, but public employment gives rise to certain obligations which are protected by the constitutional provision against the impairment of contracts.

Even though created or protected by constitutional provisions, public offices may be abolished and their incidents affected by the adoption of a new constitution[1] or of an amendment to an existing constitution.[2] Public officers do not have contractual rights to specific terms of compensation and employment within the meaning of the Contract Clause.[3]

Generally, the terms and conditions of public employment are not protected by the Contract Clause of the state constitution because they are controlled by statute or ordinance, not by contract, but once a public employee has accepted employment and performed work for a public employer, the employee obtains certain rights arising from the legislative provisions that establish the terms of the employment relationship, including vested pension rights, and those rights are protected by the Contract Clause

from elimination or repudiation by the state.[4] Public employment also gives rise to certain obligations which are protected by the constitutional provision against the impairment of contracts, including the right to the payment of salary which has been earned.[5]

When agreements of employment between the state and public employees have been adopted by governing bodies, such agreements are binding and constitutionally protected. Thus, where the employment relationship is governed by contract, a public employee's breach of contract claim is not simply defeated by status as a public employee.[6]

Constitutional amendment.

An amendment to a state constitution changes applicable law with regard to the contract rights of officials when it states that legislation would not constitute an obligation of contract pursuant to the state constitution or any other provision of law and is ineffective as applied to a protected group since it is in derogation of the Contract Clause of the Federal Constitution.[7] However, it is not constitutionally ineffective under a similar state constitutional provision.[8] In any event, as a consequence of a constitutional amendment setting forth the public policy of the state and authorizing specific legislation, the Contract Clauses of the federal and state constitutions do not affect the power of the state to enact legislation, affecting the contracts of public employees, pursuant to such constitutional authorization.[9]

CUMULATIVE SUPPLEMENT

Cases:

County's statements, during arbitration proceedings that led to collective bargaining agreement (CBA) that included annual wage increases for police officers employed by county, raising the possibility that a wage freeze would be mandated by county interim finance authority, did not prevent officers from having reasonable expectation of wage increases, for purposes of determining the substantiality of the impairment of the contract, in action challenging under Contracts Clause a wage freeze implemented by the authority, which had been created by state statute to exercise oversight during declared control periods for county's fiscal emergency; nothing suggested that either officers' union or the arbitrators adopted county's view that imposition of wage freeze by the authority was imminent or likely. U.S. Const. art. 1, § 10, cl. 1; N.Y. Civil Service Law § 209(4)(c)(v)(b); N.Y. Public Authorities Law § 3669(1), (2)(d)(iii), (3)(a). Sullivan v. Nassau County Interim Finance Authority, 959 F.3d 54 (2d Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Pa.—French v. Commonwealth ex rel. Zimmerman, 78 Pa. 339, 1875 WL 13082 (1875).

2 Ala.—Downs v. City of Birmingham, 240 Ala. 177, 198 So. 231 (1940).
La.—Guillory v. Jones, 197 La. 165, 1 So. 2d 65 (1941).

3 N.J.—Matter of Coruzzi, 95 N.J. 557, 472 A.2d 546 (1984).

4 Cal.—Deputy Sheriffs' Association of San Diego County v. County of San Diego, 233 Cal. App. 4th 573, 182 Cal. Rptr. 3d 759 (4th Dist. 2015), review denied, (Apr. 1, 2015).

5 Cal.—Gilb v. Chiang, 186 Cal. App. 4th 444, 111 Cal. Rptr. 3d 822 (3d Dist. 2010).
Nev.—Nicholas v. State, 116 Nev. 40, 992 P.2d 262 (2000).
Budget impasse
State employees who work during a budget impasse obtain a right, protected by the Impairment-Of-Contract Clause of the constitution, to the ultimate payment of salary that has been earned.
Cal.—White v. Davis, 30 Cal. 4th 528, 133 Cal. Rptr. 2d 648, 68 P.3d 74 (2003).

6 Cal.—Retired Employees Assn. of Orange County, Inc. v. County of Orange, 52 Cal. 4th 1171, 134 Cal. Rptr. 3d 779, 266 P.3d 287 (2011).

7 Cal.—Olson v. Cory, 134 Cal. App. 3d 85, 184 Cal. Rptr. 325 (2d Dist. 1982).

8 Cal.—Olson v. Cory, 134 Cal. App. 3d 85, 184 Cal. Rptr. 325 (2d Dist. 1982).

9 Ohio—Vincent v. Elyria Bd. of Ed., 7 Ohio App. 2d 58, 36 Ohio Op. 2d 151, 218 N.E.2d 764 (9th Dist. Lorain County 1966).

End of Document

16A C.J.S. Constitutional Law § 546

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

4. Public Offices and Public Employment

§ 546. Legislative power over public offices and employment

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2722 to 2724

The legislature, except where protection is afforded by other constitutional provisions, may deal with a public office, as distinguished from an employment under a contract, absolutely as it pleases.

Except insofar as created or protected from interference by other constitutional provisions,[1] generally, public offices and employment confer on their holders no rights that are protected by the constitutional prohibition of the passing of laws impairing the obligation of contracts.[2] Since they are not grants, contracts, or obligations which cannot be impaired by an act of the legislature, the legislature may deal with such offices absolutely as it pleases[3] and may even abolish them altogether.[4] It follows that it may abridge[5] or extend[6] the term or tenure of office, change the terms and conditions of office holding or public employment[7] or the duties, thereof,[8] and increase[9] or reduce[10] the compensation of persons already in office.

The legislature may also set up added qualifications for holding office[11] and create new disqualifications,[12] new causes for removal from offices already existing,[13] and new tribunals or modes of procedure to try title to office or removal therefrom.[14]

Furthermore, it may establish a civil service system,[15] and may give preference in employment to veterans,[16] and may authorize a change in the terms of the appointment to office.[17]

In order to determine if a statute deprives a state employee of a contractual property right in violation of the state constitution, the court must first consider whether there has been an impairment of the contract, whether the actions of the defendant in fact acted as a substantial impairment of the contractual relationship, and whether that impairment was nonetheless permissible and legitimate.[18]

A distinction must be made, however, between the power of the state to pass laws affecting officers and its power over contracts made under statutes or ordinances for the performance of professional or private services for a fixed time at a fixed sum as such contracts of employment are within the protection of the constitution and may not be impaired.[19] Thus, a unilateral reduction in contractually established, future state employee salary obligations constitutes substantial impairment for Contract Clause purposes.[20] There is no impairment by a change in the law which merely modifies an existing procedure which is written into existing contracts by operation of law[21] or, under the particular circumstances of the case, by a change in conditions for arbitration and in collective bargaining procedures.[22]

A teacher's tenure law may create a contractual obligation which may not be impaired,[23] but other authority does not consider it to have such effect.[24] In any event, a contract between a public employer and its employees is subject to impairment through the exercise of the police power,[25] and this is so when a contract exists under the provisions of a teacher tenure law.[26]

Footnotes

1 Ala.—White v. State, 123 Ala. 577, 26 So. 343 (1899).

2 U.S.—Dodge v. Board of Education of City of Chicago, 302 U.S. 74, 58 S. Ct. 98, 82 L. Ed. 57 (1937); State of Mississippi, for Use of Robertson v. Miller, 276 U.S. 174, 48 S. Ct. 266, 72 L. Ed. 517 (1928).
Cal.—Olson v. Cory, 27 Cal. 3d 532, 178 Cal. Rptr. 568, 636 P.2d 532 (1980).
N.Y.—Cook v. City of Binghamton, 48 N.Y.2d 323, 422 N.Y.S.2d 919, 398 N.E.2d 525 (1979).
Tenn.—Blackwell v. Quarterly County Court of Shelby County, 622 S.W.2d 535 (Tenn. 1981).
As to the legislative control of municipal officers, generally, see § 534.
Discretionary personnel policy
A government employer's unilateral modification of a discretionary personnel policy does not constitute the impairment of a contract under the constitution.
W. Va.—Collins v. City of Bridgeport, 206 W. Va. 467, 525 S.E.2d 658 (1999).

3 Ky.—Johnson v. Laffoon, 257 Ky. 156, 77 S.W.2d 345 (1934).
Pa.—Visor v. Waters, 320 Pa. 406, 182 A. 241 (1936).
Wis.—State ex rel. McKenna v. District No. 8 of Town of Milwaukee, 243 Wis. 324, 10 N.W.2d 155, 147 A.L.R. 290 (1943).

4 Cal.—Legislature v. Eu, 54 Cal. 3d 492, 286 Cal. Rptr. 283, 816 P.2d 1309 (1991).
Ky.—Howard v. Saylor, 305 Ky. 504, 204 S.W.2d 815 (1947).

5 U.S.—Dodge v. Board of Education of City of Chicago, 302 U.S. 74, 58 S. Ct. 98, 82 L. Ed. 57 (1937).
Wis.—State ex rel. McKenna v. District No. 8 of Town of Milwaukee, 243 Wis. 324, 10 N.W.2d 155, 147 A.L.R. 290 (1943).

6 Pa.—Visor v. Waters, 320 Pa. 406, 182 A. 241 (1936).

7 U.S.—Arceneaux v. Treen, 671 F.2d 128 (5th Cir. 1982).
Or.—Personnel Division of Executive Dept. v. St. Clair, 10 Or. App. 106, 498 P.2d 809 (1972).

8 U.S.—Roy v. Jones, 349 F. Supp. 315 (W.D. Pa. 1972), judgment aff'd, 484 F.2d 96 (3d Cir. 1973).
Pa.—Visor v. Waters, 320 Pa. 406, 182 A. 241 (1936).

Wyo.—In re Gillette Daily Journal, 44 Wyo. 226, 11 P.2d 265 (1932), supplemented, 45 Wyo. 173, 17 P.2d 665 (1933).

9 Fla.—Kirk v. Brantley, 228 So. 2d 278 (Fla. 1969).

La.—State ex rel. Munsch v. Board of Com'rs of Port of New Orleans, 198 La. 283, 3 So. 2d 622 (1941).

Wis.—State ex rel. McKenna v. District No. 8 of Town of Milwaukee, 243 Wis. 324, 10 N.W.2d 155, 147 A.L.R. 290 (1943).

10 U.S.—Dodge v. Board of Education of City of Chicago, 302 U.S. 74, 58 S. Ct. 98, 82 L. Ed. 57 (1937).

Cal.—Legislature v. Eu, 54 Cal. 3d 492, 286 Cal. Rptr. 283, 816 P.2d 1309 (1991).

Limiting compensation

The legislature could enact legislation limiting the compensation of a supernumerary sheriff without impairing the obligation of contract as guaranteed by the Alabama Constitution since the salary of the sheriff was not based upon a contract.

Ala.—Cleburne County Com'n v. Norton, 979 So. 2d 766 (Ala. 2007).

Incentive pay

An amendment of a statute giving extra pay to correctional officers who acquired specific educational credits, changing the incentive pay from a specified percentage of the salary base to a specified flat sum, did not unconstitutionally impair the contract as the statute did not unmistakably create contractual rights; the statute merely provided that the incentive pay specified would be afforded if the educational qualifications were met by the employee and did not say that the provisions were a contractual commitment by the state or would never be changed, nor was there language authorizing the state to enter into contracts guaranteeing such benefits forever.

U.S.—Rhode Island Broth. Of Correctional Officers v. Rhode Island, 357 F.3d 42 (1st Cir. 2004).

11 N.J.—Turner v. Passaic Pension Commission, 112 N.J.L. 476, 10 N.J. Misc. 1270, 163 A. 282 (Sup. Ct. 1932).

A.L.R. Library

Validity, construction, and application of enactments relating to requirement of residency within or near specified governmental unit as condition of continued employment for policemen or firemen, 4 A.L.R.4th 380, § 3(d) (Enactment requiring residence within or near governmental unit; particular challenges—Ex post facto law; impairment of obligation of contract).

12 Mass.—Houghton v. School Committee of Somerville, 306 Mass. 542, 28 N.E.2d 1001 (1940).

Utah—State ex rel. Stain v. Christensen, 84 Utah 185, 35 P.2d 775 (1934).

13 U.S.—Arceneaux v. Treen, 671 F.2d 128 (5th Cir. 1982).

N.Y.—Canteline v. McClellan, 282 N.Y. 166, 25 N.E.2d 972 (1940).

14 N.C.—Smith v. State, 298 N.C. 115, 257 S.E.2d 399 (1979).

15 Ohio—Lawrence v. Edwin Shaw Hosp., 34 Ohio App. 3d 137, 517 N.E.2d 984 (10th Dist. Franklin County 1986).

Changes

Statutory changes to the civil service laws in the area of certification, increment salary increases, layoffs, and reemployment from layoffs related to the terms and conditions of public employment which did not give rise to contractual rights enforceable by state employees.

Wash.—Washington Federation of State Employees, AFL-CIO, Council 28 AFSCME v. State, 101 Wash. 2d 536, 682 P.2d 869 (1984).

16 Mich.—Swantush v. City of Detroit, 257 Mich. 389, 241 N.W. 265 (1932).

17 Ohio—State ex rel. Bishop v. Board of Ed. of Mt. Orab Village School Dist., Brown County, 139 Ohio St. 427, 22 Ohio Op. 494, 40 N.E.2d 913 (1942).

18 Neb.—Sack v. Castillo, 278 Neb. 156, 768 N.W.2d 429 (2009).

19 Cal.—Olson v. Cory, 27 Cal. 3d 532, 178 Cal. Rptr. 568, 636 P.2d 532 (1980).

Mont.—Local No. 8 Intern. Ass'n of Fire Fighters v. City of Great Falls, 174 Mont. 53, 568 P.2d 541 (1977).

Nev.—Public Emp. Retirement Bd. v. Washoe County, 96 Nev. 718, 615 P.2d 972 (1980).

20 U.S.—University of Hawai'i Professional Assembly v. Cayetano, 183 F.3d 1096, 137 Ed. Law Rep. 77 (9th Cir. 1999).

Mass.—Massachusetts Community College Council v. Com., 420 Mass. 126, 649 N.E.2d 708 (1995).

Unpaid leave

A bill requiring state employees to take unpaid leave would violate the Contract Clauses of the federal and state constitutions.

N.H.—Opinion of the Justices, 135 N.H. 625, 609 A.2d 1204 (1992).

21 **Procedure for renewal**

Kan.—Gragg v. Unified School Dist. No. 287, 6 Kan. App. 2d 152, 627 P.2d 335 (1981).

22 U.S.—Local Division 589, Amalgamated Transit Union, AFL-CIO, CLC v. Com. of Mass., 666 F.2d 618 (1st Cir. 1981).

23 Minn.—Krueth v. Independent School Dist. No. 38, Red Lake, Minn., 496 N.W.2d 829, 81 Ed. Law Rep. 310 (Minn. Ct. App. 1993).

24 U.S.—Phelps v. Board of Education of Town of West New York, 300 U.S. 319, 57 S. Ct. 483, 81 L. Ed. 674 (1937); Phelps v. Board of Education of Town of West New York, 300 U.S. 319, 57 S. Ct. 483, 81 L. Ed. 674 (1937).

Ill.—Fumarolo v. Chicago Bd. of Educ., 142 Ill. 2d 54, 153 Ill. Dec. 177, 566 N.E.2d 1283, 65 Ed. Law Rep. 1181 (1990).

25 N.Y.—Mutual Aid Ass'n of Paid Fire Dept. of City of Yonkers, N.Y., Inc. v. City of Yonkers, 60 A.D.2d 856, 401 N.Y.S.2d 98 (2d Dep't 1978).

Ohio—Vincent v. Elyria Bd. of Ed., 7 Ohio App. 2d 58, 36 Ohio Op. 2d 151, 218 N.E.2d 764 (9th Dist. Lorain County 1966).

26 Minn.—Minnesota Ass'n of Public Schools v. Hanson, 287 Minn. 415, 178 N.W.2d 846 (1970).

End of Document

16A C.J.S. Constitutional Law § 547

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

4. Public Offices and Public Employment

§ 547. Municipal governments' power over public offices and employment

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2722 to 2724

A municipal corporation may change, abridge, or abolish a municipal office, but it cannot impair its contract with an employee.

Although in some jurisdictions it has been held that cities and towns do not have the same power as the legislature over city and town offices,[1] the rule generally adopted accords them a like power.[2] Thus, cities and towns have the power to reduce the salaries of their officers and employees.[3] An ordinance which operates prospectively may require employees to move within city limits without violating the Contract Clause.[4]

A municipality cannot, however, without impairing the obligation of contract, abolish the position of an employee,[5] change its terms with respect to salaries,[6] or abolish other contractual rights.[7] To determine whether a city has unconstitutionally interfered with its employee's contractual rights, the court must determine whether there has been an impairment of the contract; whether the city's actions, in fact, operated as a substantial impairment of the contractual relationship; and, if so, whether that impairment was nonetheless a permissible, legitimate exercise of the city's sovereign powers.[8]

Footnotes

1 Conn.—State v. Barbour, 53 Conn. 76, 22 A. 686 (1885).

2 N.J.—Isola v. Borough of Belmar, 34 N.J. Super. 544, 112 A.2d 738 (App. Div. 1955).

City comptroller

A terminated city comptroller did not have a right to continued employment, protected by the constitutional ban on impairment of contract.

U.S.—Cinaglia v. Levin, 258 F. Supp. 2d 390 (D.N.J. 2003).

3 U.S.—Baltimore Teachers Union, American Federation of Teachers Local 340, AFL-CIO v. Mayor and City Council of Baltimore, 6 F.3d 1012, 86 Ed. Law Rep. 92 (4th Cir. 1993).

Cal.—Legislature v. Eu, 54 Cal. 3d 492, 286 Cal. Rptr. 283, 816 P.2d 1309 (1991).

4 Miss.—Hattiesburg Firefighters Local 184 v. City of Hattiesburg, 263 So. 2d 767 (Miss. 1972).

5 Ga.—Elliott v. City Council of Augusta, 49 Ga. App. 568, 176 S.E. 548 (1934).

Ohio—Ludwig v. Board of Ed. of City School Dist. of City of Cincinnati, 72 Ohio App. 437, 27 Ohio Op. 359, 39 Ohio L. Abs. 409, 52 N.E.2d 765 (1st Dist. Hamilton County 1943).

6 **Longevity pay**

Mont.—Local No. 8 Intern. Ass'n of Fire Fighters v. City of Great Falls, 174 Mont. 53, 568 P.2d 541 (1977).

7 Ky.—Keathley v. Town of Martin, 253 S.W.2d 3 (Ky. 1952).

No discharge except for cause

A city charter conferring a package of job guarantees upon selected city employees, and a guaranty that no employee in the classified service could be discharged except for cause and upon written charges, and after an opportunity to be heard, when construed together, created a substantive right which could not be repealed or affected by the enactment of a new law.

Va.—City of Norfolk v. Kohler, 234 Va. 341, 362 S.E.2d 894 (1987).

Vacation and sick days

The unilateral divestment of deferred compensation (accumulated vacation and sick days) earned by a school district's chief auditor and executive administrators before the abolition of their positions upon creation of a state-operated school district would unconstitutionally impair the obligation of contracts; paying these vested amounts would not be a new obligation and was not necessary for restructuring the school staff.

N.J.—Caponegro v. State Operated School Dist. of City of Newark, Essex County, 330 N.J. Super. 148, 748 A.2d 1208, 143 Ed. Law Rep. 562 (App. Div. 2000).

8 Neb.—Miller v. City of Omaha, 253 Neb. 798, 573 N.W.2d 121 (1998).

End of Document

16A C.J.S. Constitutional Law § 548

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

4. Public Offices and Public Employment

§ 548. Rights of third persons in relation to contract

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2722 to 2724

The legislature cannot impair the rights of third persons held under contracts incident to the holding of public office.

Contract rights incident to the holding of public office, in which third persons have an interest, cannot be violated by the legislature.[1] However, no such rights arise on the appointment of a judge pro tempore by the parties to a controversy.[2] Furthermore, the legislature may enact valid legislation to relieve public officers and bondspersons from loss of public funds where the loss is not occasioned by the officers' fault, since individual taxpayers have no vested interest in such funds, and no impairment of obligation of contracts results.[3] Nonetheless, a taxpayer has vested rights in funds collected by a special levy for which a corresponding benefit is conferred.[4]

Any rights a third person may have in the enforcement of a contract are subject to an express provision therein that the legislature should be free to alter it at will.[5]

Footnotes

1 N.H.—Wiggin v. City of Manchester, 72 N.H. 576, 58 A. 522 (1904).

2 Cal.—Martello v. Superior Court in and for Los Angeles County, 202 Cal. 400, 261 P. 476 (1927).

3 U.S.—Schenebeck v. McCrary, 298 U.S. 36, 56 S. Ct. 672, 80 L. Ed. 1031 (1936).
Ark.—Bauer v. North Arkansas Highway Imp. Dist. No. 1, 168 Ark. 220, 270 S.W. 533, 38 A.L.R. 1507 (1925).
Ohio—State ex rel. Bolsinger v. Swing, 54 Ohio App. 251, 7 Ohio Op. 438, 23 Ohio L. Abs. 65, 6 N.E.2d 999 (1st Dist. Hamilton County 1936).

4 § 492.

5 Pa.—Malone v. Hayden, 329 Pa. 213, 197 A. 344 (1938).

End of Document

16A C.J.S. Constitutional Law § 549

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

4. Public Offices and Public Employment

§ 549. Retirement benefits, pensions, and annuities; disability benefits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2723, 2725(1) to 2725(6)

Generally, the retirement plans of state and local governments give rise to contractual rights which are protected against impairment.

There is nothing inherent in government retirement plans which compels the conclusion that they are protected against modification under state and federal constitutions.[1] A statute which provides public officers with a system of pensions or annuities to be paid wholly from public funds does not constitute a contract between the state and the beneficiaries and may be changed without contravening the constitutional prohibition against impairment.[2] The legislature is not constrained by the impairment of Contract Clauses of the state and federal constitutions in modifying or amending statutory pension programs before the time that rights thereunder become fixed.[3]

However, it is generally accepted that the retirement plans of state and local governments give rise to contractual rights within the scope of the Contract Clause.[4] A number of states have provisions in either their constitutions or statutes conferring independent protection for public retirement benefits.[5] When a public employee's rights to retirement benefits become absolutely vested, a

contract exists between the employee and the state which cannot be modified by unilateral action on the part of the legislature.[6] Any alterations of a pension statute must have a prospective effect and cannot adversely affect the contractual rights of existing state employees who relied upon the statute to their detriment.[7]

When analyzing whether a law impairs public pension contracts, a court considers: (1) whether a contractual relationship exists, (2) whether legislation has substantially impaired that contractual relationship, and (3) if so, whether the impairment is reasonable and necessary to serve a legitimate public purpose.[8]

Any modification by the legislature of an employee's contract rights prior to retirement must be reasonable,[9] related to the theory of a sound pension system,[10] and any changes detrimental to the employee must be offset by comparable new advantages.[11] The Contract Clause is not violated by any change with respect to the pensions of public employees which does not constitute an impairment of the contract,[12] and legislation which alters a right of employment and not a right of retirement does not impair pension contract rights.[13] Furthermore, amendments to a pension plan for public employees may be mere breaches of contract, not rising to the level of Contract Clause violations, where nothing prevents plan participants and beneficiaries from pursuing a state law breach of contract claim nor shields the government from its obligation to pay damages if it were found in breach of contract.[14] Similarly, the failure to pay pension fund benefits to vested officers may not rise to an impairment of contractual obligations in support of a Contract Clause claim if damages are available for the alleged breach.[15]

Detrimental reliance.

In public employee pension cases, what often concerns the court is not the technical concept of "vesting" but rather the conditions under which public employees have a property right protected under the Contract Clauses because of substantial detrimental reliance on the existing pension system.[16] An employee's membership in a pension system and forbearance in seeking other employment prevents the legislature from impairing the obligations of the pension contract once the employee has performed a substantial part of the employee's end of the bargain and relied to the employee's detriment.[17]

Disability benefits.

Statutes providing the terms of disability benefits for public employees, which do not contain any words as to contracts, but merely express public policy, do not create a contract within the meaning of the Contract Clause.[18] Thus, changes with respect to such benefits do not impair the Contract Clause[19] except for persons who are already disabled and therefore have a vested right to the pension.[20] A statute which provides for an offset of pension benefits against any worker's compensation benefits owed to the employee does not work an unconstitutional impairment of a contractual obligation.[21]

CUMULATIVE SUPPLEMENT

Cases:

Plan sponsor's amendment to pension plan was more favorable to participant, and, thus, did not decrease participant's accrued benefit in violation of ERISA's anti-cutback rule, although amended plan calculated participant's expected future salary increases as only one and one-half percent per year, while employee had received yearly salary increases of more than five percent since he was hired, where amended plan gave participant vested benefit plus increase in imputed average compensation for as long as he continued working, original plan did not guarantee salary increases in future years, and participant's expectation of future

salary increases was not accrued benefit when amendment occurred. Employee Retirement Income Security Act of 1974 § 204, 29 U.S.C.A. § 1054(g)(1). Teufel v. Northern Trust Company, 887 F.3d 799 (7th Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Me.—Spiller v. State, 627 A.2d 513, 84 Ed. Law Rep. 320 (Me. 1993).
Mo.—Fraternal Order of Police Lodge No. 2 v. City of St. Joseph, 8 S.W.3d 257 (Mo. Ct. App. W.D. 1999).
W. Va.—State ex rel. West Virginia Regional Jail and Correctional Facility Authority v. West Virginia Inv. Management Bd., 203 W. Va. 413, 508 S.E.2d 130 (1998).

2 U.S.—Dodge v. Board of Education of City of Chicago, 302 U.S. 74, 58 S. Ct. 98, 82 L. Ed. 57 (1937); Hoffman v. City of Warwick, 909 F.2d 608 (1st Cir. 1990); Pittman v. Chicago Bd. of Educ., 860 F. Supp. 495, 94 Ed. Law Rep. 216 (N.D. Ill. 1994), aff'd, 64 F.3d 1098, 103 Ed. Law Rep. 68 (7th Cir. 1995).
Funding statutes
Current and retired public school teachers did not have a constitutionally protected contract right to the method adopted by the legislature to fund Teachers' Pension and Annuity Fund (TPAF), as required in order to maintain a claim asserting an impairment of contract rights in violation of United States and New Jersey Constitutions against the state for failing to address shortfalls in statutorily mandated contributions to TPAF; the New Jersey Constitution did not contain a provision creating a constitutional right in the funding of retirement benefits, New Jersey Constitution's appropriations and debt limitation clauses precluded one legislature from binding future legislatures with respect to appropriations, though TPAF funding statutes contained the word "shall" the statutes did not clearly and unambiguous evince a legislative intent to extend a nonforfeitable right to pension benefits to future appropriations, and the legislature reserved to itself the right to modify TPAF.
N.J.—New Jersey Educ. Ass'n v. State, 412 N.J. Super. 192, 989 A.2d 282, 253 Ed. Law Rep. 749 (App. Div. 2010).

3 Mich.—Tyler v. Livonia Public Schools, 220 Mich. App. 697, 561 N.W.2d 390, 117 Ed. Law Rep. 293 (1996), aff'd, 459 Mich. 382, 590 N.W.2d 560, 133 Ed. Law Rep. 1016 (1999).

4 U.S.—Howell v. Anne Arundel County, 14 F. Supp. 2d 752 (D. Md. 1998).
Cal.—County of Orange v. Association of Orange County Deputy Sheriffs, 192 Cal. App. 4th 21, 121 Cal. Rptr. 3d 151 (2d Dist. 2011).
Wis.—Benson v. Gates, 188 Wis. 2d 389, 525 N.W.2d 278, 96 Ed. Law Rep. 726 (Ct. App. 1994).
Ordinance or statute as part of contract
An ordinance or statute establishing a retirement plan for government employees becomes part of the contract of employment and is a part of the compensation for the services rendered, so that an attempt to amend the statute or ordinance and reduce or eliminate the retirement benefits the employee is to receive violates the impairment clause of the state constitution.
Ga.—DeKalb County School Dist. v. Gold, 318 Ga. App. 633, 734 S.E.2d 466, 286 Ed. Law Rep. 1226 (2012).

5 Ariz.—Fields v. Elected Officials' Retirement Plan, 234 Ariz. 214, 320 P.3d 1160 (2014).
Cal.—Deputy Sheriffs' Association of San Diego County v. County of San Diego, 233 Cal. App. 4th 573, 182 Cal. Rptr. 3d 759 (4th Dist. 2015), review denied, (Apr. 1, 2015).
Mich.—Seitz v. Probate Judges Retirement System, 189 Mich. App. 445, 474 N.W.2d 125 (1991).
Ohio—State ex rel. Horvath v. State Teachers Retirement Bd., 83 Ohio St. 3d 67, 1998-Ohio-424, 697 N.E.2d 644, 127 Ed. Law Rep. 1017 (1998).
Additional protection
The Contract Clause of the state constitution applies to the general contract provisions of a public retirement plan while the pension clause applies only to public retirement benefits; therefore, the pension clause confers additional, independent protection for public retirement benefits separate and distinct from the protection afforded by the Contract Clause.

Ariz.—Pendergast v. Arizona State Retirement System, 234 Ariz. 535, 323 P.3d 1186, 188 L. Ed. 2d 33 (Ct. App. Div. 1 2014), review denied, (Jan. 6, 2015).

Bankruptcy

As long as the State of California authorizes its municipalities to be debtors in cases under Chapter 9, municipal contracts, including municipal pension agreements, may be impaired by means of a confirmed Chapter 9 plan for adjustment of municipal debts, despite the unusually inflexible "vested right" which public employees possess, by virtue of the Contract Clause of the California Constitution, in public employee pension benefits; the Supremacy Clause of the United States Constitution resolved any conflict between a clear power of Congress and a contrary state law in favor of Congress.

U.S.—In re City of Stockton, California, 526 B.R. 35 (Bankr. E.D. Cal. 2015).

6 Cal.—Deputy Sheriffs' Association of San Diego County v. County of San Diego, 233 Cal. App. 4th 573, 182 Cal. Rptr. 3d 759 (4th Dist. 2015), review denied, (Apr. 1, 2015).

Kan.—Denning v. Kansas Public Employees Retirement System, 285 Kan. 1045, 180 P.3d 564 (2008).

Nev.—Nicholas v. State, 116 Nev. 40, 992 P.2d 262 (2000).

Wash.—Bowles v. Washington Dept. of Retirement Systems, 121 Wash. 2d 52, 847 P.2d 440 (1993).

As to vested rights in a pension, see § 496.

Terms "vesting" and "contractual"

When used in the context of a public employment pension plan, the terms "vesting" and "contractual" are not synonymous, and references in a statute to vesting do not necessarily create a contract for purposes of the Contract Clauses of the federal and state constitutions; often, "vesting" refers to the period provided by a plan for which an employee must work to become eligible for a pension if and when the employee attains retirement age.

N.H.—American Federation of Teachers v. State, 2015 WL 222181 (N.H. 2015).

7 W. Va.—Myers v. West Virginia Consol. Public Retirement Bd., 226 W. Va. 738, 704 S.E.2d 738 (2010); Adams v. Ireland, 207 W. Va. 1, 528 S.E.2d 197 (1999).

8 Wash.—Washington Educ. Ass'n v. Washington Dept. of Retirement Systems, 181 Wash. 2d 233, 332 P.3d 439 (2014).

Tax exemption statutes not contract

Mich.—In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38, 490 Mich. 295, 806 N.W.2d 683 (2011).

S.C.—Anonymous Taxpayer v. South Carolina Dept. of Revenue, 377 S.C. 425, 661 S.E.2d 73 (2008).

No contractual right

A statute setting contribution rates for members of the New Hampshire Retirement System (NHRS) did not establish a contractual right that could not be modified, and thus, amendment to statutory rates did not constitute a violation of the constitutional Contract Clause; there was no indication that in enacting the statute, the legislature unmistakably intended to bind itself from prospectively changing contribution rates.

N.H.—Professional Fire Fighters of New Hampshire v. State, 167 N.H. 188, 107 A.3d 1229 (2014).

The retired participants in the Public Employees' Retirement Association (PERA) pension program did not have a contractual right to the cost of living adjustment (COLA) formula in effect at the times they became eligible for retirement or retired, and thus, an amendment to the statute governing the calculation of the COLA did not violate the Contract Clauses of the state and federal constitutions; the statutes establishing and altering the COLA formula contained no contractual or durational language suggesting a legislative intent to bind itself, and the COLA formula had been changed numerous times, such that no retiree could reasonably expect that any particular COLA provision was constitutionally protected from change.

Colo.—Justus v. State, 2014 CO 75, 336 P.3d 202 (Colo. 2014).

A prior version of Public School Employees Retirement Act (PSERA) that established health care benefits for public school retirees did not create a contract between the state and public school retirees, and therefore the amendment of PSERA to alter the multiplier used to calculate pension benefits did not unconstitutionally impair existing contractual obligations; the legislature could not bind the power of a successive legislature; there was a strong presumption that statutes did not create contractual rights; the principal function of the legislature was not to make contracts but to make laws that established the policy of the state; PSERA contained no language indicating a legislative intent to be contractually bound, and PSERA had been previously amended.

Mich.—AFT Michigan v. Michigan, 303 Mich. App. 651, 846 N.W.2d 583, 305 Ed. Law Rep. 494 (2014), appeal granted, 495 Mich. 1002, 846 N.W.2d 544 (2014) and judgment aff'd, 2015 WL 1578785 (Mich. 2015).

No impairment

Reducing or eliminating the statutory tax exemption for public-pension incomes as set forth in a statute did not impair accrued financial benefits of a pension plan or retirement system of the state or its political subdivisions in violation of the Michigan Constitution; the accrued financial benefit of a pension plan is the pension income itself, not any tax exemption that might at some moment in time be attached to that income.

Mich.—In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38, 490 Mich. 295, 806 N.W.2d 683 (2011).

9 U.S.—State of Nev. Employees Ass'n, Inc. v. Keating, 903 F.2d 1223 (9th Cir. 1990).

Kan.—Denning v. Kansas Public Employees Retirement System, 285 Kan. 1045, 180 P.3d 564 (2008).

Unreasonable modifications

Statutes providing, inter alia, for invasion of a pension trust fund for payment of benefits to noncontributing ineligible beneficiaries; for increased benefits to certain pensioners; for inclusion; for computational purposes, of the time which certain pensioners spent as employees of the county; and for benefits to a class of former state legislators who were not entitled to such benefits at the time they left public office made unreasonable modifications in the pension plans.

Del.—In re State Employees' Pension Plan, 364 A.2d 1228 (Del. 1976).

10 Cal.—Frazier v. Tulare County Bd. of Retirement, 42 Cal. App. 3d 1046, 117 Cal. Rptr. 386 (5th Dist. 1974).

Kan.—Denning v. Kansas Public Employees Retirement System, 285 Kan. 1045, 180 P.3d 564 (2008).

11 U.S.—Parker v. Wakelin, 937 F. Supp. 46, 113 Ed. Law Rep. 116 (D. Me. 1996), aff'd in part, rev'd in part on other grounds, 123 F.3d 1, 120 Ed. Law Rep. 966 (1st Cir. 1997).

Cal.—Board of Administration v. Wilson, 52 Cal. App. 4th 1109, 61 Cal. Rptr. 2d 207 (3d Dist. 1997).

Kan.—Denning v. Kansas Public Employees Retirement System, 285 Kan. 1045, 180 P.3d 564 (2008).

Wash.—Washington Educ. Ass'n v. Washington Dept. of Retirement Systems, 181 Wash. 2d 212, 332 P.3d 428 (2014).

Modified method of calculating benefits

Unconstitutional impairment of retired judges' contractual rights due to application of amended statutes that modified method of calculating retirement benefits for judges was substantial, within the meaning of the New Hampshire Contract Clause, if it was not offset by compensating benefit.

N.H.—Cloutier v. State, 163 N.H. 445, 42 A.3d 816 (2012).

12 Mich.—Kosa v. Treasurer of State of Mich., 408 Mich. 356, 292 N.W.2d 452 (1980).

Mo.—State ex rel. Dreer v. Public School Retirement System of City of St. Louis, 519 S.W.2d 290 (Mo. 1975).

Minimal impairment

Any impairment to a retired county employee's contractual rights in his pension that resulted from a county agency's audit policy was minimal and thus did not violate the Contract Clause; the audit policy required pension recipients, once every two years, to notarize an audit form, which cost at the most $10.

U.S.—Katzman v. Los Angeles County Metropolitan Transportation Authority, 2014 WL 5698207 (N.D. Cal. 2014).

Teachers not yet receiving benefits

The Contract Clause rights of public school teachers not yet receiving pension benefits were not violated by changes to a retirement system that altered the pension benefits they would receive on retirement; a statute indicating that "no amendment may cause any reduction in the amount of benefits which would be due a member" did not evince an unmistakable intent by the legislature to create private contractual rights against a reduction of benefits before such benefits were actually receivable.

U.S.—Parker v. Wakelin, 123 F.3d 1, 120 Ed. Law Rep. 966 (1st Cir. 1997).

13 Cal.—San Bernardino Public Employees Assn. v. City of Fontana, 67 Cal. App. 4th 1215, 79 Cal. Rptr. 2d 634 (4th Dist. 1998).

Reduction of interest on withdrawn contributions

Legislation, which in effect reduced the amount of interest paid to members of a pension system, withdrawing their contributions in a lump sum upon leaving public service before retirement, did not violate the Contract Clause.

Cal.—Vielehr v. State, 104 Cal. App. 3d 392, 163 Cal. Rptr. 795 (3d Dist. 1980).

14 U.S.—Cherry v. Mayor and City Council of Baltimore City, 762 F.3d 366 (4th Cir. 2014), cert. denied, 135 S. Ct. 768, 190 L. Ed. 2d 641 (2014).

As to impairment and breach distinguished, see § 522.

15 U.S.—Crosby v. City of Gastonia, 682 F. Supp. 2d 537 (W.D. N.C. 2010), judgment aff'd, 635 F.3d 634 (4th Cir. 2011).

16 W. Va.—Board of Trustees of Police Officers Pension and Relief Fund of City of Wheeling v. Carenbauer, 211 W. Va. 602, 567 S.E.2d 612 (2002).

17 W. Va.—Myers v. West Virginia Consol. Public Retirement Bd., 226 W. Va. 738, 704 S.E.2d 738 (2010); Board of Trustees of Police Officers Pension and Relief Fund of City of Wheeling v. Carenbauer, 211 W. Va. 602, 567 S.E.2d 612 (2002).

18 N.Y.—Cook v. City of Binghamton, 48 N.Y.2d 323, 422 N.Y.S.2d 919, 398 N.E.2d 525 (1979).

Disability insurance

Lifetime long-term disability (LTD) insurance provided by public employer, a metropolitan utilities district, was not a "pension" or "deferred compensation," and thus, an employee whose disability benefits terminated at age 65 had no contractual right in the policy for Contract Clause purposes; enrollment in the LTD plan was purely voluntary, and the accrual of coverage was not contingent upon the rendering of services but depended upon the payment of premiums and the occurrence of an injury.

Neb.—Livingston v. Metropolitan Utilities Dist., 269 Neb. 301, 692 N.W.2d 475 (2005).

19 N.Y.—Cook v. City of Binghamton, 48 N.Y.2d 323, 422 N.Y.S.2d 919, 398 N.E.2d 525 (1979).

20 Mich.—Tyler v. Livonia Public Schools, 220 Mich. App. 697, 561 N.W.2d 390, 117 Ed. Law Rep. 293 (1996), aff'd, 459 Mich. 382, 590 N.W.2d 560, 133 Ed. Law Rep. 1016 (1999).

21 Md.—Mazor v. State Dept. of Correction, 279 Md. 355, 369 A.2d 82 (1977).

Neb.—Bauers v. City of Lincoln, 255 Neb. 572, 586 N.W.2d 452 (1998).

End of Document

16A C.J.S. Constitutional Law § 550

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

a. In General

§ 550. Corporate charters, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2706, 2710, 2711, 2714

A charter granted by a state to a private corporation is a contract which, insofar as the valuable rights granted therein are consideration for its acceptance or for the conveyance to the corporation by third persons of valuable property rights, is within the protection of the prohibition against the impairment of the obligations of contracts found in the federal and state constitutions.

In the celebrated *Dartmouth College* case,[1] decided by the United States Supreme Court in 1819, the rule was established that a charter granted by a state to a private corporation constitutes a contract between the state and the incorporators within the protection of the Contract Clause of the Federal Constitution, and the rule thus established has met with universal recognition and enforcement by the federal and state courts in cases arising under the Contract Clause of the Federal Constitution and similar clauses in state constitutions.[2] This is so whether the corporation was organized and incorporated under the general laws of a state[3] or under a charter granted by special act of the legislature of a state.[4]

While it is said that the charter of a private corporation becomes after acceptance a contract between the state and the corporation,[5] generally, a charter or act of incorporation, however, special or limited in its terms, is not, in its entirety, a contract, nor are all its provisions protected as a contract from amendment or repeal.[6] However, every valuable right granted by the charter or act of incorporation, which by a fair construction may be said to be the consideration, in whole or in part, for the acceptance of the charter and the organization under it,[7] or for the conveyance to the corporation by third persons of valuable property rights,[8] is protected by a contract that the state will not revoke or impair the right or privilege granted.

A state cannot by any form of action to which it gives the effect of law,[9] whether by a constitutional ordinance,[10] by an act of legislation,[11] or by a municipal ordinance,[12] amend or repeal the charter of a private corporation against the will of the corporation.

Public or private corporations.

The inviolability of charters applies only to private corporations.[13] Therefore, the legislature may modify the charters of public corporations at will.[14] The test for determining whether a corporation is private within the rule is whether the government has the sole right to regulate, control, and direct the corporation, and its funds and its franchises, at its own will and pleasure.[15] The mere receipt of some public funding does not make a corporation public and exempt from the constitutional prohibition against the impairment of contracts.[16]

Footnotes

1 U.S.—Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 4 L. Ed. 629, 1819 WL 2201 (1819).

2 U.S.—Matter of Jesus Loves You, Inc., 40 B.R. 42 (Bankr. M.D. Fla. 1984).
S.C.—Trustees of Columbia Academy v. Board of Trustees of Richland County School Dist. No. 1, 262 S.C. 117, 202 S.E.2d 860 (1974).
Tex.—Calvert v. Capital Southwest Corp., 441 S.W.2d 247 (Tex. Civ. App. Austin 1969), writ refused n.r.e., (Oct. 1, 1969).

3 Or.—Haberlach v. Tillamook County Bank, 134 Or. 279, 293 P. 927, 72 A.L.R. 1245 (1930).

4 U.S.—Bank of Oxford v. Love, 250 U.S. 603, 40 S. Ct. 22, 63 L. Ed. 1165 (1919).
N.H.—Trustees of Phillips Exeter Academy v. Exeter, 90 N.H. 472, 27 A.2d 569 (1940).

5 Ala.—Opinion of the Justices, 333 So. 2d 125 (Ala. 1976).
Mich.—Harsha v. City of Detroit, 261 Mich. 586, 246 N.W. 849, 90 A.L.R. 853 (1933).

6 Minn.—State v. Great Northern Ry. Co., 100 Minn. 445, 111 N.W. 289 (1907).

7 U.S.—Piqua Branch of State Bank of Ohio v. Knoop, 57 U.S. 369, 16 How. 369, 14 L. Ed. 977, 1853 WL 7693 (1853).

8 U.S.—Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 4 L. Ed. 629, 1819 WL 2201 (1819).

9 Wash.—State ex rel. Starkey v. Alaska Airlines, Inc., 68 Wash. 2d 318, 413 P.2d 352 (1966).

10 Mo.—Washington University v. Baumann, 341 Mo. 708, 108 S.W.2d 403 (1937).
Or.—Haberlach v. Tillamook County Bank, 134 Or. 279, 293 P. 927, 72 A.L.R. 1245 (1930).

11 Ala.—Opinion of the Justices, 333 So. 2d 125 (Ala. 1976).
S.C.—Trustees of Columbia Academy v. Board of Trustees of Richland County School Dist. No. 1, 262 S.C. 117, 202 S.E.2d 860 (1974).

12 Mo.—City of Independence v. Independence Waterworks Co., 153 Mo. App. 693, 135 S.W. 956 (1911).

13 Mich.—Harsha v. City of Detroit, 261 Mich. 586, 246 N.W. 849, 90 A.L.R. 853 (1933).

14 S.C.—Trustees of Columbia Academy v. Board of Trustees of Richland County School Dist. No. 1, 262 S.C. 117, 202 S.E.2d 860 (1974).

Water conservation districts

A statute created "special taxing districts" when it provided for the creation of water conservation districts, and not private corporations organized under a state charter as asserted, and thus, a change in the charter by the legislature could not unconstitutionally impair contractual rights.

Ind.—Holland v. Ballard, 270 Ind. 173, 383 N.E.2d 1032 (1978).

15 S.C.—Trustees of Columbia Academy v. Board of Trustees of Richland County School Dist. No. 1, 262 S.C. 117, 202 S.E.2d 860 (1974).

16 S.C.—Trustees of Columbia Academy v. Board of Trustees of Richland County School Dist. No. 1, 262 S.C. 117, 202 S.E.2d 860 (1974).

End of Document

16A C.J.S. Constitutional Law § 551

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

a. In General

§ 551. Nature and extent of corporate rights and privileges

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2695, 2696, 2698, 2706, 2708, 2710, 2711, 2714

Corporate charters and franchises, except where such power is expressly relinquished, are entered into subject to the inherent power of the state to supervise and regulate.

In general, a grant by a state through its legislature of a franchise, privilege, or exemption to a corporation, either in the act incorporating it, or by other legislation, followed by action of the corporation under or in reliance on the grant so made, constitutes a contract, based on a valuable consideration, the obligation of which cannot be impaired by subsequent legislation.[1]

Although contracts by the state or one of its properly authorized agencies with a public service corporation, by which it agrees for a consideration to relinquish its power to prescribe conditions or to regulate practices for a period specified therein, are valid contracts which cannot be impaired,[2] in general, a corporation is subject to reasonable and proper regulation by the state.[3] Franchise contracts between municipalities and public service companies are made subject to the inherent power of the legislature to supervise and regulate.[4]

A statute, or state board or commission acting under authority of a statute, which requires a public service company which obtained its franchise prior to the enactment of the statute to continue its service after its obligation to do so has ended under the terms of its franchise or because of the expiration of its franchise, violates constitutional provisions against impairment of the obligation of contracts.[5]

Footnotes

1 Ohio—Wheatley v. A.I. Root Co., 147 Ohio St. 127, 33 Ohio Op. 464, 69 N.E.2d 187 (1946).
Pa.—City of Philadelphia v. Holmes Elec. Protective Co. of Philadelphia, 335 Pa. 273, 6 A.2d 884 (1939).

2 Ind.—Central Union Telephone Co. v. Indianapolis Telephone Co., 189 Ind. 210, 126 N.E. 628 (1920).

3 U.S.—Gladstone v. Galton, 145 F.2d 742 (C.C.A. 9th Cir. 1944).
Pa.—Scranton-Spring Brook Water Service Co. v. Pennsylvania Public Utility Commission, 165 Pa. Super. 286, 67 A.2d 735 (1949).

4 W. Va.—Huntington Water Corp. v. City of Huntington, 115 W. Va. 531, 177 S.E. 290 (1934).

5 U.S.—Union Light, Heat & Power Co. v. Railroad Commission of Commonwealth of Kentucky, 17 F.2d 143 (E.D. Ky. 1926).
Ohio—East Ohio Gas Co. v. City of Cleveland, 106 Ohio St. 489, 1 Ohio L. Abs. 80, 140 N.E. 410 (1922).

16A C.J.S. Constitutional Law § 552

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

a. In General

§ 552. Consolidation of corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2706, 2710, 2711, 2714

On the consolidation of two or more corporations, if the consolidated corporation is a new corporation, it is subject to any legislative power of amendment or repeal existing at the date of its creation, but if it is a continuation of one of the old corporations, its charter, property, and franchises are subject only to the same rights and restrictions by which they were held by the respective corporations before consolidation.

On the consolidation of two corporations, each of which has a charter not subject to legislative amendment or repeal, the charter of the consolidated corporation becomes subject to any power of legislative amendment existing at the date of its issuance.[1] If the property and franchises of one corporation are acquired by a new corporation, it holds them subject to the reserved power of the legislature as it existed at the time of the transfer[2] and also subject to any reserved power of the legislature in force at the time of such transfer as against the grantor corporation.[3]

If, however, two corporations are consolidated, not by the creation of a new corporation but by the merger of one corporation into another so that the merged corporation ceases to exist and all its property and franchises pass to the continuing corporation,

the latter holds all its property and franchises subject to the same rights and restrictions by which they were held by the respective corporations before the merger.[4]

Footnotes

1 U.S.—Atlantic & Gulf R. Co. v. State of Georgia, 98 U.S. 359, 25 L. Ed. 185, 1878 WL 18383 (1878).

2 U.S.—San Antonio Traction Co. v. Altgelt, 200 U.S. 304, 26 S. Ct. 261, 50 L. Ed. 491 (1906).

3 U.S.—Union Pac. R. Co. v. Mason City & Ft. D.R. Co., 128 F. 230 (C.C.A. 8th Cir. 1904), aff'd, 199 U.S. 160, 26 S. Ct. 19, 50 L. Ed. 134 (1905).

4 U.S.—Central Railroad & Banking Co v. State of Georgia, 92 U.S. 665, 23 L. Ed. 757, 1875 WL 17848 (1875).

16A C.J.S. Constitutional Law § 553

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

a. In General

§ 553. Monopolies and exclusive franchises

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2708

The grant of a franchise by the state or its political subdivisions which is not exclusive does not prevent the grantor from granting a similar franchise to another or entering into competition itself with the grantee; but if the franchise is exclusive, the grantor is constitutionally prevented from making similar grants to others or from entering into competition itself with the grantee.

The grant of an exclusive privilege by the state or a political subdivision, if valid, implies a contract not to revoke the grant[1] and a further contract not to grant the same privilege to another.[2] However, grants of monopolies and exclusive franchises, even though exclusive in terms, are subject to the exercise by the state of its police power[3] or to a law which is reasonable and necessary to serve an important public purpose.[4] Such monopolies or franchises are usually found in the context of public utilities.[5]

A franchise to provide a service to an area outside the limits of a city is not impaired where the area is annexed by the city and the privilege of providing the service is granted to another.[6] Of course, after the time fixed for a franchise has expired, there is no longer any contract to be impaired.[7]

In accordance with general rules of construction, a franchise will not be held exclusive unless the intention to grant an exclusive privilege clearly appears.[8] On the grant of a franchise not in terms exclusive, there is no constitutional obligation on the state or municipality not to grant to another corporation a similar franchise even though the latter greatly impairs or destroys the value of the former.[9]

A municipal corporation which, by the terms of an authorized franchise or contract, grants to a private company, either expressly, or by clear implication, the exclusive right to supply the inhabitants of the city with water may not itself enter into competition with the grantee.[10] The grant by a state or municipality of a franchise not exclusive imposes on the state or municipality no obligation not to enter into competition with the grantee of the franchise.[11] In addition, a franchise to a private corporation or its contract to supply services does not prevent the municipality from constructing and operating like public utilities of its own unless the franchise or contract clearly expresses or implies an exclusive right.[12]

Footnotes

1 U.S.—New Orleans Gas-light Co. v. Louisiana Light & Heat Producing & Manufacturing Co., 115 U.S. 650, 6 S. Ct. 252, 29 L. Ed. 516 (1885).
Ala.—City of Bessemer v. Birmingham Elec. Co., 248 Ala. 345, 27 So. 2d 565 (1946).
Ferry leases
Exclusive ferry leases, granted the petitioner by the State, were contracts between the State and the petitioner.
U.S.—Larson v. State of South Dakota, 278 U.S. 429, 49 S. Ct. 196, 73 L. Ed. 441 (1929).

2 Ala.—City of Bessemer v. Birmingham Elec. Co., 248 Ala. 345, 27 So. 2d 565 (1946).
Ark.—Arkansas Power & Light Co. v. West Memphis Power & Water Co., 187 Ark. 41, 58 S.W.2d 206 (1933).

3 Ala.—City of Bessemer v. Birmingham Elec. Co., 248 Ala. 345, 27 So. 2d 565 (1946).
Mo.—Swisher Inv. Co. v. Brimson Drainage Dist. of Grundy and Harrison Counties, 362 Mo. 869, 245 S.W.2d 75 (1952).
Rate regulation of cable television
A statute preempting the local rate regulation of cable television did not unconstitutionally impair the obligation of contract between a charter city and a cable television franchisee; any impairment was minimal and a proper exercise by the state of its police power in an industry affected with the public interest.
Cal.—Cox Cable San Diego, Inc. v. City of San Diego, 188 Cal. App. 3d 952, 233 Cal. Rptr. 735 (4th Dist. 1987).

4 **Taxicab franchise**
Fla.—Yellow Cab Co. of Dade County v. Dade County, 412 So. 2d 395 (Fla. 3d DCA 1982).

5 **Entertainment district not considered franchise contract**
U.S.—219 South Atlantic Blvd. Inc. v. City of Ft. Lauderdale, Fla., 239 F. Supp. 2d 1265 (S.D. Fla. 2002).

6 U.S.—Dixie Elec. Membership Corp. v. City of Baton Rouge, 440 F.2d 819 (5th Cir. 1971).

7 Mo.—Kansas City Power & Light Co. v. Town of Carrollton, 346 Mo. 802, 142 S.W.2d 849 (1940).

8 U.S.—Larson v. State of South Dakota, 278 U.S. 429, 49 S. Ct. 196, 73 L. Ed. 441 (1929); Knoxville Water Co. v. City of Knoxville, 200 U.S. 22, 26 S. Ct. 224, 50 L. Ed. 353 (1906); City of Joplin v. Southwest Missouri Light Co., 191 U.S. 150, 24 S. Ct. 43, 48 L. Ed. 127 (1903).

9 Ark.—City of El Dorado v. Coats, 175 Ark. 289, 299 S.W. 355 (1927).
La.—Richland Gas Co. v. Hale, 169 La. 300, 125 So. 130 (1929).

10 U.S.—City of Vicksburg v. Vicksburg Waterworks Co., 202 U.S. 453, 26 S. Ct. 660, 50 L. Ed. 1102 (1906).

11 U.S.—Mutual Oil Co. v. Zehrung, 11 F.2d 887 (D. Neb. 1925).

12 U.S.—Porto Rico Ry., Light & Power Co. v. Colom, 106 F.2d 345 (C.C.A. 1st Cir. 1939).

End of Document

16A C.J.S. Constitutional Law § 554

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

a. In General

§ 554. Licenses or privileges granted to foreign corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2710

A privilege or license to do business granted by the state to a foreign corporation is not a contract within the constitutional provision prohibiting states from passing laws impairing contractual obligations.

A privilege or license to do business granted by the state to a foreign corporation is not a contract or license within the constitutional provision prohibiting states from passing laws impairing contractual obligations.[1] The grant to a foreign corporation of a right or license to do business within the state does not, by reason of the Contract Clause of the constitution, deprive the State of the power to pass laws regulating the conduct of its business,[2] or to levy on it additional taxes[3] or fees,[4] or to impose on it heavier burdens or more onerous conditions,[5] or even to exclude it from the state altogether.[6]

A statute is not void as impairing the obligation of contracts of foreign corporations with third persons where it provides that if such foreign corporations have not complied with certain conditions prescribed by law, all contracts made by them for the transaction of business within the state shall be enforceable against them but not by them.[7]

The power of the state over a foreign corporation, however, is subject to the limitations that, if it has, for a consideration, granted such corporation the right to do business within the state on certain terms, it may not thereafter pass any statute impairing the terms of the contract thus constituted.[8] The State may not impair the obligation of any franchise granted to a foreign corporation for a consideration or on the faith of which expenditures have been made.[9]

Footnotes

1 U.S.—Home Indem. Co. of New York v. O'Brien, 104 F.2d 413 (C.C.A. 6th Cir. 1939).

2 U.S.—Asbury Hospital v. Cass County, N. D., 326 U.S. 207, 66 S. Ct. 61, 90 L. Ed. 6 (1945).
N.D.—Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W.2d 438 (1943).

3 Tenn.—Investors Syndicate of America, Inc. v. Allen, 198 Tenn. 288, 279 S.W.2d 497 (1955).

4 Mont.—Great Western Sugar Co. v. Mitchell, 119 Mont. 328, 174 P.2d 817 (1946).

5 N.D.—Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W.2d 438 (1943).

6 U.S.—Hammond Packing Co. v. State of Ark., 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909).
N.D.—Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W.2d 438 (1943).

7 U.S.—Diamond Glue Co. v. U.S. Glue Co., 187 U.S. 611, 23 S. Ct. 206, 47 L. Ed. 328 (1903).

8 N.D.—Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W.2d 438 (1943).
Treatment similar to domestic corporations
U.S.—American Smelting & Refining Co. v. People of State of Colorado, 204 U.S. 103, 27 S. Ct. 198, 51 L. Ed. 393 (1907).

9 U.S.—Chicago, R.I. & P. Ry. Co. v. Ludwig, 156 F. 152 (C.C.E.D. Ark. 1907), aff'd, 216 U.S. 146, 30 S. Ct. 280, 54 L. Ed. 423 (1910).

End of Document

16A C.J.S. Constitutional Law § 555

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

a. In General

§ 555. Insurance corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2712

Statutes in force at the time of the creation of an insurance corporation and subsequent enactments prescribing remedies against the corporation do not impair contract obligations with the company within the meaning of constitutional prohibitions against such impairment.

Charter rights acquired by an insurance corporation at the time of its creation may not be violated in view of constitutional provisions against the impairment of the obligations of contracts.[1] However, this rule does not prevail with respect to expired charters.[2] Repeal of legislative acts under which insurance companies have been organized does not violate the obligations of contracts.[3] The prohibition also does not extend to remedies prescribed for the dissolution of an insurance corporation, which may be modified by the State.[4]

Footnotes

1 U.S.—O'Neil v. Welch, 245 F. 261 (C.C.A. 3d Cir. 1917).

2 Ind.—Union Ins. Co. v. State ex rel. Indiana Dept. of Ins., 401 N.E.2d 1372 (Ind. Ct. App. 1980).

3 Neb.—State ex rel. Neff v. Christian Broth. of America Burial Ass'n, 186 Neb. 525, 184 N.W.2d 643 (1971).

4 Tenn.—Mutual Aid v. Williams, 219 Tenn. 95, 407 S.W.2d 171 (1966).

End of Document

16A C.J.S. Constitutional Law § 556

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

a. In General

§ 556. Railroad franchises

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2714

A railroad charter becomes, on acceptance, a contract within the Federal Constitution, and the obligations thereof cannot be impaired by the state legislature.

A railroad charter becomes, on acceptance, a contract within the Federal Constitution,[1] and the obligations thereof cannot be impaired by the state legislature.[2] A municipal franchise ordinance accepted and acted on by a street railway company becomes an irrevocable contract and a property right protected by the constitution.[3] A charter authorizing a railway company to lease its road to any other railroad company is not impaired by statutory provisions rendering the lessor liable with the lessee for torts committed by the latter.[4]

Franchise contracts of a railroad or street railroad company do not prevent a state, because of constitutional prohibitions against impairment of the obligations of contracts, from regulating their operation under its police power,[5] and neither does a contract between a municipality and a company prevent the municipality from making regulations for such purpose.[6]

Footnotes

1 Md.—Levin v. Baltimore & O.R. Co., 179 Md. 125, 17 A.2d 101 (1941).

2 Md.—Levin v. Baltimore & O.R. Co., 179 Md. 125, 17 A.2d 101 (1941).

3 Pa.—Valley Rys. v. City of Harrisburg, 280 Pa. 385, 124 A. 644 (1924).

4 U.S.—Chicago & A.R. Co. v. McWhirt, 243 U.S. 422, 37 S. Ct. 392, 61 L. Ed. 826 (1917).

5 Ill.—State Public Utilities Commission v. City of Quincy, 290 Ill. 360, 125 N.E. 374 (1919).

Grade crossing requirements

Ala.—City of Birmingham v. Louisville & N.R. Co., 216 Ala. 178, 112 So. 742 (1926).

Location of equipment

Mo.—City of Cape Girardeau v. St. Louis-San Francisco Ry. Co., 305 Mo. 590, 267 S.W. 601, 36 A.L.R. 1488 (1924).

6 Ill.—People ex rel. City of Chicago v. Chicago City Ry. Co., 324 Ill. 618, 155 N.E. 781 (1926).

End of Document

16A C.J.S. Constitutional Law § 557

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

b. Effect of Legislative Reservation of Power to Amend or Repeal Charter, Franchise, or Privilege

§ 557. Reservation of right to exercise legislative powers, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2706, 2710, 2711, 2712, 2714

Where such power has been reserved, the legislature may alter, amend, or withdraw any franchise or privilege granted in a corporate charter.

A reservation to the legislature, either by constitution, statute, or in the charter itself, of the power to alter, amend, or withdraw any franchise or privilege granted in a corporate charter, in force when such charter is granted, qualifies such a grant so that a subsequent exercise of such reserved power is not within constitutional prohibitions against impairing the obligation of a contract.[1] In like manner, the power of amendment may be reserved by the terms of a franchise granted to a public service company.[2]

Footnotes

1 U.S.—Phillips Petroleum Co. v. Jenkins, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936); International Bridge Co. v. People of State of New York, 254 U.S. 126, 41 S. Ct. 56, 65 L. Ed. 176 (1920).
N.J.—A. P. Smith Mfg. Co. v. Barlow, 13 N.J. 145, 98 A.2d 581, 39 A.L.R.2d 1179 (1953).

Power company

If necessary, a statute authorizing the city to appropriate water will be treated as an amendment to a power company's charter making the company's right subject to those of the city.
U.S.—Sears v. City of Akron, 246 U.S. 242, 38 S. Ct. 245, 62 L. Ed. 688 (1918).

Mutual burial association

An amendatory statute and implementing regulation requiring a mutual burial association to transfer funeral benefits in cash to any official funeral director upon request of the representative of a deceased member did not unconstitutionally impair a previously negotiated contract of the mutual burial association precluding payment in cash or payment to anyone other than its official funeral director where a certificate contained an express reservation of power by the legislature to modify, cancel, or abridge the rules and bylaws of the association.
N.C.—Adair v. Orrell's Mut. Burial Ass'n, Inc., 284 N.C. 534, 201 S.E.2d 905 (1974).

2 U.S.—Minneapolis St. Ry. Co. v. City of Minneapolis, 189 F. 445 (C.C.D. Minn. 1911).

End of Document

16A C.J.S. Constitutional Law § 558

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

b. Effect of Legislative Reservation of Power to Amend or Repeal Charter, Franchise, or Privilege

§ 558. Reservation by constitution or by charter

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2706, 2710, 2711, 2712, 2714

The power to alter, amend, or repeal corporate charters in many states is reserved to the legislature by a constitutional provision, which automatically becomes a part of all charters thereafter granted, whether under general law or by special act.

Corporate charters in many states may be altered or repealed because the power to do so is reserved by a constitutional provision, either with or without limitations on such power.[1] Such reservations apply with equal force to all corporations chartered thereafter, whether by general law or special act.[2]

Since the constitutional provision automatically becomes a part of the charter,[3] and enters into, and becomes a part of, the stockholder's contract,[4] a reservation in the charters themselves is not essential to the existence of the power to alter or amend.[5]

Where incorporation by special charter has been allowed, it has been the common practice to secure to the state the right of amendment and repeal by inserting in the charter itself a reservation of such right.[6] The power to amend or alter the terms of a franchise granted to a corporation may, in like manner, be reserved in the grant itself.[7] The effect of the reservation of the rights of alteration and repeal in the charter of a corporation is on the legislative grant itself, to prevent its becoming, what it otherwise might become, a contract with the state, so that an act containing such provision confers a mere privilege, subject at any time to be withdrawn or modified at the will of the legislature.[8]

Footnotes

1 U.S.—Phillips Petroleum Co. v. Jenkins, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936); Sears v. City of Akron, 246 U.S. 242, 38 S. Ct. 245, 62 L. Ed. 688 (1918).
Okla.—Gibson Products Co. of Tulsa v. Murphy, 1940 OK 100, 186 Okla. 714, 100 P.2d 453 (1940).
Va.—Craddock-Terry Co. v. Powell, 180 Va. 242, 22 S.E.2d 30 (1942), on reh'g, 181 Va. 417, 25 S.E.2d 363 (1943).
Wyo.—Drew v. Beckwith, Quinn & Co., 57 Wyo. 140, 114 P.2d 98 (1941).

2 N.Y.—In re Mt. Sinai Hospital, 128 Misc. 476, 219 N.Y.S. 505 (Sup 1926), aff'd, 223 A.D. 836, 228 N.Y.S. 855 (1st Dep't 1928), aff'd, 250 N.Y. 103, 164 N.E. 871, 62 A.L.R. 564 (1928).

3 Wyo.—Drew v. Beckwith, Quinn & Co., 57 Wyo. 140, 114 P.2d 98 (1941).

4 Ala.—Randle v. Winona Coal Co., 206 Ala. 254, 89 So. 790, 19 A.L.R. 118 (1921).

5 Md.—Kelly v. Consolidated Gas, Elec. Light & Power Co., 153 Md. 523, 138 A. 487 (1927).

6 U.S.—Boston Beer Co. v. State of Massachusetts, 97 U.S. 25, 24 L. Ed. 989, 1877 WL 18647 (1877).
Va.—Craddock-Terry Co. v. Powell, 180 Va. 242, 22 S.E.2d 30 (1942), on reh'g, 181 Va. 417, 25 S.E.2d 363 (1943).

7 U.S.—Hamilton Gaslight & Coke Co. v. City of Hamilton, 146 U.S. 258, 13 S. Ct. 90, 36 L. Ed. 963 (1892).

8 U.S.—In re Pennsylvania College Cases, 80 U.S. 190, 20 L. Ed. 550, 1871 WL 14821 (1871).

16A C.J.S. Constitutional Law § 559

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

b. Effect of Legislative Reservation of Power to Amend or Repeal Charter, Franchise, or Privilege

§ 559. Reservation by general statute

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2706, 2710, 2711, 2712, 2714

The power to alter, amend, or repeal corporate charters in a number of jurisdictions is reserved by a general statute which applies to, and becomes a part of, all corporate charters granted thereafter unless the charter contains an express provision exempting it therefrom.

The power to amend, alter, or repeal the charters of corporations in a number of jurisdictions is reserved by general statutes,[1] which reserved power automatically becomes a part of, and applies to, all future corporate charters as if the reservation were expressly inserted in each charter.[2] Such a reserved power applies whether the corporation was chartered under general law or by special act[3] and covers not only new charters but also amendments and extensions thereafter made to old charters.[4] However, it does not necessarily apply to subsequent grants of corporate franchises and privileges, where the charter of the corporation grantee was obtained before the enactment of the reservation statute, the question being one of legislative intention.[5]

A reservation of power to amend or repeal, however, contained in a general statute, does not apply to a charter thereafter granted, which contains an express provision exempting it from such alteration or repeal.[6] The inclusion of statutory provisions by stockholders in their articles of association will not prevent their repeal from being effective in the future under a power reserved in the statute.[7]

Footnotes

1 Del.—Hartford Acc. & Indem. Co. v. W. S. Dickey Clay Mfg. Co., 26 Del. Ch. 411, 24 A.2d 315 (1942).
N.Y.—McNulty v. W. & J. Sloane, 184 Misc. 835, 54 N.Y.S.2d 253 (Sup 1945).

2 Ala.—Opinion of the Justices, 333 So. 2d 125 (Ala. 1976).
Del.—Hartford Acc. & Indem. Co. v. W. S. Dickey Clay Mfg. Co., 26 Del. Ch. 411, 24 A.2d 315 (1942).

3 U.S.—Miller v. State of New York, 82 U.S. 478, 21 L. Ed. 98, 1872 WL 15356 (1872).

4 U.S.—Northern Bank of Kentucky v. Stone, 88 F. 413 (C.C.D. Ky. 1898).

5 U.S.—State of New Jersey v. Yard, 95 U.S. 104, 24 L. Ed. 352, 1877 WL 18564 (1877).

6 Ky.—Slade v. City of Lexington, 141 Ky. 214, 132 S.W. 404 (1910).

7 U.S.—Sherman v. Smith, 66 U.S. 587, 17 L. Ed. 163, 1861 WL 7652 (1861).

16A C.J.S. Constitutional Law § 560

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

b. Effect of Legislative Reservation of Power to Amend or Repeal Charter, Franchise, or Privilege

§ 560. Scope of reserved power, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2706, 2710, 2711, 2712, 2714

In general, the exercise of the reserved power to alter, amend, or repeal corporate charters extends to any alteration which will not substantially impair the grant and which the legislature deems proper to secure either public or private rights.

In general, the limit of the exercise of the power reserved to the legislature to amend or repeal charters extends to any alteration or amendment in a charter granted subject to such reserved power, which will not defeat or substantially impair the object of the grant or any rights vested under it, and which the legislature may deem proper to secure either that object or other public or private rights, or to promote the due administration of its affairs.[1]

The reservation of power to amend or repeal authorizes acts substantially changing the powers granted,[2] the grant of additional powers auxiliary to the original design[3] and the requirement that such powers shall be exercised,[4] and the modification or restriction of power.[5] Furthermore, it extends to the increase of burdens,[6] the withdrawal of privileges or exemptions already

granted,[7] the regulation of the conduct of the business of the corporation[8] even in contravention of express terms of the charter,[9] the consolidation of the corporation with other corporations,[10] and the repeal of the charter,[11] and even the substitution of an entirely new charter.[12]

The power extends not only to subsequent grants of original charters but also to extensions or renewals of preexisting charters[13] and subsequent grants of franchises to the corporation.[14]

Scope.

The reserved power to amend or repeal applies only to the contract of incorporation, which includes such matters as the definition of the scope and nature of the corporate enterprise, the amounts and kinds of corporate stock, and the scheme of management of the corporation.[15] It is not confined to the primary franchise of a corporation, that is, to a franchise granting corporate existence, and which is not the property of the corporation, but extends to the secondary franchise of a corporation, that is, to a franchise acquired by a corporation after corporate existence commenced.[16]

The legislature may terminate all rights derived solely from the charter as distinguished from those independently acquired in the exercise of powers granted by the charter.[17] However, the State has no special control over those features of the corporate existence and activities which are enjoyed in common with individuals and derived from the general law rather than from the content of the corporate grant.[18] The corporation and its members are not subject to any kind of confiscatory legislation or discriminatory burden which takes the guise of an amendment to the charter.[19]

Footnotes

1 U.S.—Phillips Petroleum Co. v. Jenkins, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936).
N.J.—A. P. Smith Mfg. Co. v. Barlow, 13 N.J. 145, 98 A.2d 581, 39 A.L.R.2d 1179 (1953).

2 U.S.—Calder v. People of State of Michigan, 218 U.S. 591, 31 S. Ct. 122, 54 L. Ed. 1163 (1910).
N.J.—A. P. Smith Mfg. Co. v. Barlow, 13 N.J. 145, 98 A.2d 581, 39 A.L.R.2d 1179 (1953).

3 U.S.—Bigelow v. Calumet & Hecla Mining Co., 167 F. 721 (C.C.A. 6th Cir. 1909).

4 Del.—Morford v. Trustees of Middletown Academy, 25 Del. Ch. 58, 13 A.2d 168 (1940).

5 U.S.—Hammond Packing Co. v. State of Ark., 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909).
Conn.—New Haven Metal & Heating Supply Co. v. Danaher, 128 Conn. 213, 21 A.2d 383 (1941).

6 Ark.—Ft. Smith Light & Traction Co. v. Board of Improvement of Paving Dist. No. 16, 169 Ark. 690, 276 S.W. 1012 (1925), aff'd, 274 U.S. 387, 47 S. Ct. 595, 71 L. Ed. 1112 (1927).

7 U.S.—Northern Cent. Ry. Co. v. State of Maryland, 187 U.S. 258, 23 S. Ct. 62, 47 L. Ed. 167 (1902).

8 Ky.—South Covington & C.R. Co. v. City of Covington, 146 Ky. 592, 143 S.W. 28 (1912), rev'd on other grounds, 235 U.S. 537, 35 S. Ct. 158, 59 L. Ed. 350 (1915).

9 U.S.—Cosmopolitan Club v. Commonwealth of Virginia, 208 U.S. 378, 28 S. Ct. 394, 52 L. Ed. 536 (1908).

10 Va.—Winfree v. Riverside Cotton Mills Co., 113 Va. 717, 75 S.E. 309 (1912).

11 § 571.

12 Wis.—Superior Water, Light & Power Co. v. City of Superior, 174 Wis. 257, 181 N.W. 113 (1921), aff'd on reh'g, 174 Wis. 257, 183 N.W. 254 (1921).

13 N.Y.—Hollender v. Rochester Food Products Corporation, 124 Misc. 130, 207 N.Y.S. 319 (Sup 1923), judgment aff'd, 215 A.D. 751, 212 N.Y.S. 833 (4th Dep't 1925), judgment aff'd, 242 N.Y. 490, 152 N.E. 271 (1926).
Wyo.—Drew v. Beckwith, Quinn & Co., 57 Wyo. 140, 114 P.2d 98 (1941).

14 Wis.—City of La Crosse v. La Crosse Gas & Electric Co., 145 Wis. 408, 130 N.W. 530 (1911).

15 U.S.—Yoakam v. Providence Biltmore Hotel Co., 34 F.2d 533 (D.R.I. 1929).

16 Wis.—Superior Water, Light & Power Co. v. City of Superior, 174 Wis. 257, 181 N.W. 113 (1921), aff'd on reh'g, 174 Wis. 257, 183 N.W. 254 (1921).

17 N.Y.—In re Mt. Sinai Hospital, 128 Misc. 476, 219 N.Y.S. 505 (Sup 1926), aff'd, 223 A.D. 836, 228 N.Y.S. 855 (1st Dep't 1928), aff'd, 250 N.Y. 103, 164 N.E. 871, 62 A.L.R. 564 (1928).

18 U.S.—Yoakam v. Providence Biltmore Hotel Co., 34 F.2d 533 (D.R.I. 1929).

19 N.Y.—In re Mt. Sinai Hospital, 250 N.Y. 103, 164 N.E. 871, 62 A.L.R. 564 (1928).

End of Document

16A C.J.S. Constitutional Law § 561

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

b. Effect of Legislative Reservation of Power to Amend or Repeal Charter, Franchise, or Privilege

§ 561. Provisions, circumstances, and factors limiting extent of power

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2706, 2710, 2711, 2712, 2714

The legislature may not amend or repeal a corporate charter if the change impairs contract obligations, deprives persons of property without due process, or denies equal protection of the laws.

The extent to which the power of the legislature to amend or repeal the charter of a corporation may be exercised is not unlimited[1] but remains subject to the provisions of the Federal Constitution which inhibit laws impairing the obligation of contracts, depriving persons of property without due process of law, or denying the equal protection of the laws.[2]

The State can take from the corporation nothing more than it has granted to it.[3] It cannot take property without compensation[4] or take away property already acquired by the exercise of rights, privileges, and franchises which are in themselves subject to repeal.[5] The State cannot destroy or impair vested rights,[6] as property rights, together with contract rights and choses in action, acquired by the corporation during its lawful existence, and which do not depend on the general powers conferred by the charter, cannot be impaired by the repeal or amendment of the charter.[7]

Additionally, the State cannot destroy or impair previously vested rights of shareholders to their proportionate interest in the property of the corporation.[8] It cannot impair contracts of the corporation with the state[9] or with third persons,[10] or between the stockholders and the corporation and between the stockholders inter se, even though such agreements are recorded in the charter.[11]

Although the legislature may qualify a corporate charter by reasonable restrictions,[12] the alterations must be reasonable,[13] must be made in good faith,[14] and must not be imposed through oppression or wrong.[15] They must be consistent with the scope and object of the act of incorporation.[16] They must not be exerted to defeat or substantially impair the purpose or object of the grant,[17] or to change the fundamental character of the corporation, without the consent of the corporation or its stockholders.[18]

Footnotes

1 U.S.—Phillips Petroleum Co. v. Jenkins, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936).
Ala.—Opinion of the Justices, 333 So. 2d 125 (Ala. 1976).
Wyo.—Drew v. Beckwith, Quinn & Co., 57 Wyo. 140, 114 P.2d 98 (1941).

2 Mass.—In re Opinion of the Justices, 300 Mass. 607, 14 N.E.2d 468 (1938).
N.Y.—McNulty v. W. & J. Sloane, 184 Misc. 835, 54 N.Y.S.2d 253 (Sup 1945).
Okla.—Yukon Mill & Grain Co. v. Vose, 1949 OK 43, 201 Okla. 376, 206 P.2d 206 (1949).

3 U.S.—Maine Cent. R. Co. v. State of Maine, 96 U.S. 499, 24 L. Ed. 836, 1877 WL 18496 (1877).

4 U.S.—Phillips Petroleum Co. v. Jenkins, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936).

5 Tex.—Fidelity Building & Loan Ass'n v. Thompson, 51 S.W.2d 578 (Tex. Comm'n App. 1932).

6 U.S.—Phillips Petroleum Co. v. Jenkins, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936).
Ill.—Kreicker v. Naylor Pipe Co., 374 Ill. 364, 29 N.E.2d 502 (1940), judgment aff'd, 312 U.S. 659, 61 S. Ct. 735, 85 L. Ed. 1107 (1941).
N.Y.—McNulty v. W. & J. Sloane, 184 Misc. 835, 54 N.Y.S.2d 253 (Sup 1945).
Voting in management of corporate affairs
Ala.—Opinion of the Justices, 333 So. 2d 125 (Ala. 1976).

7 Tex.—Fidelity Building & Loan Ass'n v. Thompson, 51 S.W.2d 578 (Tex. Comm'n App. 1932).

8 Tex.—Fidelity Building & Loan Ass'n v. Thompson, 51 S.W.2d 578 (Tex. Comm'n App. 1932).

9 U.S.—State of New Jersey v. Yard, 95 U.S. 104, 24 L. Ed. 352, 1877 WL 18564 (1877).

10 Mass.—In re Opinion of Justices, 267 Mass. 607, 166 N.E. 401, 63 A.L.R. 838 (1929).

11 Okla.—Yukon Mill & Grain Co. v. Vose, 1949 OK 43, 201 Okla. 376, 206 P.2d 206 (1949).

12 Fla.—Surf Club v. Tatem Surf Club, 151 Fla. 406, 10 So. 2d 554 (1942).

13 U.S.—Shields v. State of Ohio, 95 U.S. 319, 24 L. Ed. 357, 1877 WL 18594 (1877).
Ark.—Ft. Smith Light & Traction Co. v. Board of Improvement of Paving Dist. No. 16, 169 Ark. 690, 276 S.W. 1012 (1925), aff'd, 274 U.S. 387, 47 S. Ct. 595, 71 L. Ed. 1112 (1927).
N.Y.—In re Mt. Sinai Hospital, 128 Misc. 476, 219 N.Y.S. 505 (Sup 1926), aff'd, 223 A.D. 836, 228 N.Y.S. 855 (1st Dep't 1928), aff'd, 250 N.Y. 103, 164 N.E. 871, 62 A.L.R. 564 (1928).

14 U.S.—Shields v. State of Ohio, 95 U.S. 319, 24 L. Ed. 357, 1877 WL 18594 (1877).
Ark.—Ft. Smith Light & Traction Co. v. Board of Improvement of Paving Dist. No. 16, 169 Ark. 690, 276 S.W. 1012 (1925), aff'd, 274 U.S. 387, 47 S. Ct. 595, 71 L. Ed. 1112 (1927).

15 U.S.—Shields v. State of Ohio, 95 U.S. 319, 24 L. Ed. 357, 1877 WL 18594 (1877).
Ark.—Ft. Smith Light & Traction Co. v. Board of Improvement of Paving Dist. No. 16, 169 Ark. 690, 276 S.W. 1012 (1925), aff'd, 274 U.S. 387, 47 S. Ct. 595, 71 L. Ed. 1112 (1927).
Wis.—Superior Water, Light & Power Co. v. City of Superior, 174 Wis. 257, 181 N.W. 113 (1921), aff'd on reh'g, 174 Wis. 257, 183 N.W. 254 (1921).

16 U.S.—Phillips Petroleum Co. v. Jenkins, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936).

N.Y.—In re Mt. Sinai Hospital, 250 N.Y. 103, 164 N.E. 871, 62 A.L.R. 564 (1928).

17 U.S.—Phillips Petroleum Co. v. Jenkins, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936).
N.Y.—In re Mt. Sinai Hospital, 250 N.Y. 103, 164 N.E. 871, 62 A.L.R. 564 (1928).

18 Conn.—Perkins v. Coffin, 84 Conn. 275, 79 A. 1070 (1911).
Wyo.—Drew v. Beckwith, Quinn & Co., 57 Wyo. 140, 114 P.2d 98 (1941).

End of Document

16A C.J.S. Constitutional Law § 562

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

c. Right to Prescribe, Impose, or Regulate Rates and Charge or Collect Tolls

§ 562. Application of the right to regulating rates, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2716

Constitutional provisions against impairment of the obligation of contracts ordinarily do not apply so as to prevent a state from regulating the rates of public service corporations notwithstanding such rates are fixed by contract.

In view of the inherent authority of the state to regulate the rates to be charged by a public utility for its product or service, the legislature may itself, or through a commission, prescribe the rates to be charged by a public service company,[1] or may delegate such power to municipal corporations,[2] without violating constitutional provisions against impairment of the obligation of contracts.

Contracts by public service corporations which affect the rates to be charged for their services or products, because of the interest of the public therein, are not to be classed with those personal and private contracts, the impairment of which is forbidden by constitutional provisions.[3]

Notwithstanding any contract made by the state or city, the power to regulate rates may always be exercised where such power has been reserved by a constitutional or general statutory provision in force when the contract was made or by the terms of the corporate charter or franchise.[4] However, unreasonable regulations are void.[5]

Regulations as to rates of public service companies do not impair the obligations of contracts to which they have no reference.[6] An authorization by a state or its agency for a utility to increase its rates does not contravene the constitutional inhibition against impairment of contracts where there is no interference with the franchise granted the company.[7]

Footnotes

1 Cal.—American Toll Bridge Co. v. Railroad Commission, 12 Cal. 2d 184, 83 P.2d 1 (1938), judgment aff'd, 307 U.S. 486, 59 S. Ct. 948, 83 L. Ed. 1414 (1939).
Pa.—Scranton Electric Co. v. School Dist. of Borough of Avoca, 155 Pa. Super. 270, 37 A.2d 725 (1944).

2 Tex.—Dallas Ry. Co. v. Geller, 114 Tex. 484, 271 S.W. 1106 (1925).

3 Fla.—Miami Bridge Co. v. Railroad Com'n, 155 Fla. 366, 20 So. 2d 356 (1944).
N.J.—City of Bayonne v. Passaic Consol. Water Co., 98 N.J. Eq. 174, 130 A. 530 (Ch. 1925).

4 U.S.—City of Pawhuska v. Pawhuska Oil & Gas Co., 250 U.S. 394, 39 S. Ct. 526, 63 L. Ed. 1054 (1919); Tampa Waterworks Co. v. City of Tampa, 199 U.S. 241, 26 S. Ct. 23, 50 L. Ed. 170 (1905).

5 N.Y.—Beardsley v. New York, L.E. & W.R. Co., 162 N.Y. 230, 56 N.E. 488 (1900).

6 U.S.—Lynchburg Traction & Light Co. v. City of Lynchburg, 16 F.2d 763 (C.C.A. 4th Cir. 1927).
Ala.—Montgomery Light & Traction Co. v. Avant, 202 Ala. 404, 80 So. 497, 3 A.L.R. 384 (1918).

7 Ill.—City of Elmhurst v. Western United Gas & Elec. Co., 363 Ill. 144, 1 N.E.2d 489 (1936).

16A C.J.S. Constitutional Law § 563

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

c. Right to Prescribe, Impose, or Regulate Rates and Charge or Collect Tolls

§ 563. Right as arising or inhering in police power

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2716

Rate contracts are made subject to the police power and entered into in contemplation of the authority of the state to regulate them.

The power of the state to modify public service rates fixed by contract is based on the ground that rate contracts are made subject to the police power and are regarded as entered into in contemplation of the state's authority to regulate rates and with an implied provision that the rate named therein is subject to change, according to law, so as to keep it reasonable and nondiscriminatory.[1] Under some authority, the power also is based on the ground that the State, since the municipality is merely an agency of it, may at any time waive the rights of the municipality in the contract and permit an increase of rates.[2]

The legislature cannot, either directly or indirectly, grant to a private corporation the power to charge certain rates or to fix rates which shall be beyond its control in the exercise of its police power for the protection of the people against unreasonable charges by public service companies.[3] Accordingly, the exercise of the power of the State to control the rates and charges of

public service corporations,[4] as by the change of a rate or charge fixed by a contract between the company and its customers or the municipality it serves,[5] violates no constitutional guaranty against impairment of the obligation of a contract and cannot be forestalled by contracts attempting to fix rates in advance.[6] This is so even though the contract is made before the enactment of the statute authorizing the change[7] or is based on consideration actually paid in advance.[8] Likewise, a state order affecting utility rates by prescribing a new procedure for collecting municipal franchise fees does not impair contracts between utilities and their customers.[9]

Footnotes

1 U.S.—Sambor v. Philadelphia Rapid Transit Co, 27 F.2d 406 (E.D. Pa. 1928).
Colo.—Zelinger v. Public Service Co. of Colo., 164 Colo. 424, 435 P.2d 412 (1967).
Ohio—State ex rel. Brainard v. McConnaughey, 137 Ohio St. 431, 19 Ohio Op. 130, 30 N.E.2d 699 (1940).

2 Fla.—State v. Burr, 79 Fla. 290, 84 So. 61 (1920).

3 Or.—Portland Ry., Light & Power Co. v. Railroad Commission of Oregon, 56 Or. 468, 105 P. 709 (1909), aff'd, 229 U.S. 397, 33 S. Ct. 820, 57 L. Ed. 1248 (1913).

4 U.S.—Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio, 292 U.S. 398, 54 S. Ct. 763, 78 L. Ed. 1327, 91 A.L.R. 1403 (1934); City of Pawhuska v. Pawhuska Oil & Gas Co., 250 U.S. 394, 39 S. Ct. 526, 63 L. Ed. 1054 (1919); City of Englewood v. Denver & S.P. Ry. Co., 248 U.S. 294, 39 S. Ct. 100, 63 L. Ed. 253 (1919).

5 U.S.—Puget Sound Traction, Light & Power Co. v. Reynolds, 244 U.S. 574, 37 S. Ct. 705, 61 L. Ed. 1325, 5 A.L.R. 13 (1917).

6 U.S.—Puget Sound Traction, Light & Power Co. v. Reynolds, 244 U.S. 574, 37 S. Ct. 705, 61 L. Ed. 1325, 5 A.L.R. 13 (1917).
Conn.—City of Ansonia v. Ansonia Water Co., 101 Conn. 151, 125 A. 474 (1924).
Tex.—Fink v. City of Clarendon, 282 S.W. 912 (Tex. Civ. App. Amarillo 1926).

7 Cal.—Law v. Railroad Commission of Cal., 184 Cal. 737, 195 P. 423, 14 A.L.R. 249 (1921).
N.Y.—Public Service Commission, Second Dist., v. Pavilion Natural Gas Co., 232 N.Y. 146, 133 N.E. 427 (1921).

8 Me.—In re Caribou Water, Light & Power Co., 121 Me. 426, 117 A. 579 (1922).

9 **Separate billing for fee**
A public service commission order that municipal franchise fees paid by electric utility companies should no longer be considered as a general operating expense payable by all of the utility's customers but rather should be separately billed by the utility to the customers of the municipalities which imposed the fees did not impair the contracts between the cities and the utilities in a constitutional sense.
Fla.—City of Plant City v. Mayo, 337 So. 2d 966 (Fla. 1976).

End of Document

16A C.J.S. Constitutional Law § 564

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

c. Right to Prescribe, Impose, or Regulate Rates and Charge or Collect Tolls

§ 564. Delegation of power

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2716

Municipalities and other state agencies, when expressly authorized, may enter into inviolable contracts for a reasonable period of time as to the rates to be charged by a public utility for its service.

The State may temporarily suspend the exercise of the power to change public service rates or charges fixed by contract[1] and may vest in one of its municipalities or agencies the authority to enter into an inviolable contract for a reasonable period as to the rates to be charged by a public utility for its service.[2] Such contract will be protected against impairment by the State.[3] Where a municipality at the time of granting a franchise is vested with full and clearly conferred authority to contract with the grantee on the subject of fixing rates, the rates fixed in the franchise contract are irrevocable, during the franchise period without the consent of the municipality, as well as of the holder of the franchise, to a change.[4]

Application of this rule is narrowly confined to cases in which it clearly and unmistakably appears that the State has delegated its rate regulating power to the municipality or other agency and that the municipality or other agency has with equal clarity and

certainty exercised its delegated power by a contract fixing the rate to be charged for a limited term.[5] Exoneration from state control is neither to be presumed nor implied.[6] All doubts must be resolved in favor of continuance of the power,[7] and every presumption will be indulged against the grant by the legislature, or the exercise by the municipal corporation, of the power to preclude itself by contract from subsequent exercise of the function of regulation.[8]

As a general rule, grants of power as to rates in general terms,[9] or even an express grant of power to a municipal corporation to fix rates,[10] will not be construed as a surrender of the power of regulation. A general provision in the charter of a corporation giving it the power to establish rates,[11] or an act merely fixing a maximum rate,[12] or a statute or ordinance fixing rates,[13] or the fixing of a rate by a state commission and the acceptance thereof by the company,[14] does not amount to a contract on the part of the state not to modify the rates established by the corporation.

Footnotes

1 Ind.—Central Union Telephone Co. v. Indianapolis Telephone Co., 189 Ind. 210, 126 N.E. 628 (1920).
Me.—In re Guilford Water Co.'s Service Rates, 118 Me. 367, 108 A. 446 (1919).

2 U.S.—Home Tel. & Tel. Co. v. City of Los Angeles, 211 U.S. 265, 29 S. Ct. 50, 53 L. Ed. 176 (1908); Freeport Water Co. v. City of Freeport, 180 U.S. 587, 21 S. Ct. 493, 45 L. Ed. 679 (1901).

3 U.S.—Georgia Railway & Power Co. v. City of College Park, 262 U.S. 441, 43 S. Ct. 617, 67 L. Ed. 1074 (1923); Georgia Ry. & Power Co. v. Town of Decatur, 262 U.S. 432, 43 S. Ct. 613, 67 L. Ed. 1065 (1923).

4 Fla.—State v. Burr, 79 Fla. 290, 84 So. 61 (1920).

5 U.S.—Freeport Water Co. v. City of Freeport, 180 U.S. 587, 21 S. Ct. 493, 45 L. Ed. 679 (1901).
Contract of municipality concerning rates
U.S.—Minnesota Gas Co. v. Public Service Commission, Dept. of Public Service, State of Minn., 523 F.2d 581 (8th Cir. 1975).

6 Ind.—Winfield v. Public Service Commission of Indiana, 187 Ind. 53, 118 N.E. 531 (1918).
Me.—In re Guilford Water Co.'s Service Rates, 118 Me. 367, 108 A. 446 (1919).

7 U.S.—Freeport Water Co. v. City of Freeport, 180 U.S. 587, 21 S. Ct. 493, 45 L. Ed. 679 (1901).

8 Va.—Virginia-Western Power Co. v. Commonwealth, 125 Va. 469, 99 S.E. 723, 9 A.L.R. 1148 (1919) (disapproved of on other grounds by, Town of Victoria v. Victoria Ice, Light & Power Co., 134 Va. 134, 114 S.E. 92, 28 A.L.R. 562 (1922)).

9 U.S.—American Toll Bridge Co. v. Railroad Commission of California, 307 U.S. 486, 59 S. Ct. 948, 83 L. Ed. 1414 (1939).
Me.—In re Searsport Water Co., 118 Me. 382, 108 A. 452 (1919).

10 U.S.—Home Tel. & Tel. Co. v. City of Los Angeles, 211 U.S. 265, 29 S. Ct. 50, 53 L. Ed. 176 (1908).
Ind.—Central Union Telephone Co. v. Indianapolis Telephone Co., 189 Ind. 210, 126 N.E. 628 (1920).

11 U.S.—Chicago, M. & St. P. Ry. Co. v. State of Minn. ex rel. R.R. & Warehouse Com'n, 134 U.S. 418, 10 S. Ct. 462, 33 L. Ed. 970 (1890).

12 U.S.—Georgia Railroad & Banking Co. v. Smith, 128 U.S. 174, 9 S. Ct. 47, 32 L. Ed. 377 (1888).
Cal.—American Toll Bridge Co. v. Railroad Commission, 12 Cal. 2d 184, 83 P.2d 1 (1938), judgment aff'd, 307 U.S. 486, 59 S. Ct. 948, 83 L. Ed. 1414 (1939).

13 W. Va.—City of Benwood v. Public Service Commission, 75 W. Va. 127, 83 S.E. 295 (1914).

14 U.S.—Queens Borough Gas & Electric Co. v. Prendergast, 31 F.2d 339 (E.D. N.Y. 1928).

16A C.J.S. Constitutional Law § 565

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(1) In General

§ 565. Change in or subsequent enactment of law as impairing obligation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2660 to 2673, 2726

There is no implied contract between a state and a corporation that there shall be no change in the laws existing at the time of the incorporation.

There is no implied contract between a state and a corporation that there shall be no change in the laws existing at the time of the incorporation.[1]

A statute relating to the sale of securities, enacted to protect people from fraud in the purchase of corporate securities, does not when applied thereto impair the obligation of the contract in the charter of a national bank's affiliate securities corporation which provides that its stock can only be sold in combination with a like number of shares of the bank's stock.[2]

Footnotes

1 Iowa—Mt. Vernon Bank & Trust Co. v. Iowa Employment Sec. Commission, 233 Iowa 1165, 11 N.W.2d 402 (1943).
As to statutes enlarging or restricting corporate powers, see § 568.

2 Mass.—Commissioner of Banks v. Chase Securities Corp., 298 Mass. 285, 10 N.E.2d 472 (1937).

End of Document

16A C.J.S. Constitutional Law § 566

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(1) In General

§ 566. Exercise of police power

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2672

The State, through its legislature or other properly authorized agency, can prescribe reasonable regulations within the scope of its police power for the conduct of corporate business without impairing the obligation of contracts as they appear in the charters or franchises of the corporations to which they apply.

As a general rule, the police power of the state cannot be permanently surrendered but is always reserved.[1] The legislature may not, by the grant of a corporate charter, deprive the State of the exercise of the police power in the nature of regulations of the corporate business in the interest of the public welfare.[2] In like manner, a municipal corporation cannot, by the grant of a franchise to a public service company, preclude the enactment by the state[3] or municipality[4] of laws properly within the police power regulating the company in the conduct of its business.

All grants, stipulations, or restrictions as to corporations are within the power of subsequent legislatures under general laws enacted under the police power of the state.[5] Laws of a general nature which are passed by the legislature within the scope of its power to protect the public are as valid in their application to corporations as in their application to individuals.[6] Simply put, a company, by entering into a contract reaching into the future concerning an activity lawful when the contract was made, may not foreclose the legislature from prohibiting the activity under a reasonable exercise of the police power for the public good.[7]

Thus, the grant to a corporation of a charter or franchise does not exempt it from the operation of the police power of the state, or preclude the legislature from making such reasonable regulations for the exercise of its powers, the use of its property, and the conduct of its business as the public good may require.[8] Generally, contracts made or franchises granted, which involve the state's welfare, are not such contracts that the exercise of the state's police power with respect to the subject matter thereof is an impairment of contract rights, but they are made subject to the state's said power.[9] However, such power does not enable the state or municipality to suppress a legitimate and harmless business, without regard to whether or not it is so conducted as to be a nuisance.[10]

A statute otherwise valid is not rendered unconstitutional by the mere fact that the rules prescribed by it for the regulation of corporations injure their business or diminish the value of their property.[11]

Footnotes

1 U.S.—Phillips Petroleum Co. v. Jenkins, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936).

2 Fla.—Aztec Motel, Inc. v. State ex rel. Faircloth, 251 So. 2d 849 (Fla. 1971).
N.J.—Rocker v. Cardinal Building & Loan Ass'n of Newark, 13 N.J. Misc. 397, 179 A. 667 (Sup. Ct. 1935), judgment aff'd, 119 N.J.L. 134, 194 A. 865 (N.J. Ct. Err. & App. 1937).

3 Idaho—Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083 (1914).
Wis.—City of Kenosha v. Kenosha Home Telephone Co., 149 Wis. 338, 135 N.W. 848 (1912).

4 Ark.—Hunt v. Marianna Elec. Co., 114 Ark. 498, 170 S.W. 96 (1914).

5 Ill.—Integrity Mut. Ins. Co. v. Boys, 293 Ill. 307, 127 N.E. 748 (1920).

6 Or.—Schramm v. Bank of California, Nat. Ass'n, 143 Or. 546, 20 P.2d 1093 (1933).

7 Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).

8 U.S.—Gladstone v. Galton, 145 F.2d 742 (C.C.A. 9th Cir. 1944).
W. Va.—Security Nat. Bank & Trust Co. v. First W. Va. Bancorp., Inc., 166 W. Va. 775, 277 S.E.2d 613 (1981).

9 U.S.—Stephenson v. Binford, 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932).

10 La.—City of New Orleans v. New Orleans Butchers' Co-op. Abattoir, 153 La. 536, 96 So. 113 (1923).

11 U.S.—Hammond Packing Co. v. State of Ark., 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909).

16A C.J.S. Constitutional Law § 567

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(1) In General

§ 567. Exercise of power of eminent domain

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2674

Under the power of eminent domain, corporate charters and franchises may be taken without violating constitutional prohibitions against impairment of the obligation of contracts.

The charter of a corporation, like other contracts, is subject to the right of eminent domain in the state, and, like the property of individuals, the property of a corporation and its franchises may be taken for public uses,[1] or caused to be transferred to another corporation,[2] without violating the obligation of a contract.

In like manner, shares of stock in the hands of individuals, representing an undivided interest in the franchises and other property of the corporation, may be taken under the power of eminent domain for a public purpose.[3] This right of eminent domain may be exercised by the State even though the powers of the corporation are thereby suspended or the corporation actually dissolved.[4]

However, as in all other cases of the taking of property under the power of eminent domain, adequate compensation must be made to the owner or the taking will be unconstitutional.[5]

Footnotes

1 R.I.—Narragansett Elec. Lighting Co. v. Sabre, 50 R.I. 288, 146 A. 777, 66 A.L.R. 1553 (1929).
S.D.—Town of Emery v. Chicago, M. & St. P. Ry. Co., 35 S.D. 583, 153 N.W. 655 (1915).

2 U.S.—Greenwood v. Union Freight R. Co., 105 U.S. 13, 26 L. Ed. 961, 1881 WL 19781 (1881).

3 R.I.—Narragansett Elec. Lighting Co. v. Sabre, 50 R.I. 288, 146 A. 777, 66 A.L.R. 1553 (1929).

4 N.H.—Backus v. Lebanon, 11 N.H. 19, 1840 WL 1657 (1840).

5 U.S.—Long Island Water-Supply Co. v. City of Brooklyn, 166 U.S. 685, 17 S. Ct. 718, 41 L. Ed. 1165 (1897).

16A C.J.S. Constitutional Law § 568

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(1) In General

§ 568. Laws enlarging or restricting corporate powers

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2706, 2710, 2711, 2714

A subsequent statute enlarging the powers conferred on a corporation by its charter does not impair the contract contained in the charter, but a corporation may not be deprived by statute of any power granted in its charter which is essential to the object for which it was organized.

A subsequent statute enlarging the powers conferred on a corporation by its charter does not impair the contract contained in the charter.[1] On the other hand, a corporation may not be deprived by statute of any power granted in its charter which is essential to the object for which it was organized.[2] A power granted in the charter may not be taken away, where the effect would be to impair vested property rights acquired under it.[3]

However, to the extent that powers granted in the charter are not essential to the main objects of the charter[4] and may be repealed without disturbing vested rights,[5] they may be restricted or taken away by subsequent legislative enactment.

Footnotes

1 Mass.—Trustees of Andover Theological Seminary v. Visitors of Theological Inst. in Phillips Academy in Andover, 253 Mass. 256, 148 N.E. 900 (1925).

2 U.S.—Planters' Bank v. Sharp, 47 U.S. 301, 6 How. 301, 12 L. Ed. 447, 1848 WL 6448 (1848).

3 U.S.—Chicago, R.I. & P. Ry. Co. v. Ludwig, 156 F. 152 (C.C.E.D. Ark. 1907), aff'd, 216 U.S. 146, 30 S. Ct. 280, 54 L. Ed. 423 (1910).
Ohio—Wheatley v. A.I. Root Co., 147 Ohio St. 127, 33 Ohio Op. 464, 69 N.E.2d 187 (1946).

4 U.S.—Bank of Commerce v. State of Tennessee, 163 U.S. 416, 16 S. Ct. 1113, 41 L. Ed. 211 (1896).
Fla.—Surf Club v. Tatem Surf Club, 151 Fla. 406, 10 So. 2d 554 (1942).

5 N.Y.—People ex rel. New York Electric Lines Co. v. Ellison, 115 A.D. 254, 101 N.Y.S. 55 (1st Dep't 1906), aff'd, 188 N.Y. 523, 81 N.E. 447 (1907).

End of Document

16A C.J.S. Constitutional Law § 569

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(1) In General

§ 569. Laws relieving burdens of, or imposing burdens on, corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2706, 2710, 2711, 2714

A statute or ordinance is not invalid where its only effect is to relieve the corporation from burdens imposed by its charter; the imposition of additional burdens or new and onerous conditions on corporations, except as they constitute a proper exercise of the police power or are permissible under a reserved power to alter charters, are void as impairing the obligation of their charters.

A statute or ordinance is not invalid where its only effect is to relieve the corporation from burdens imposed by its charter.[1]

Additional burdens to those provided for in the charter may be imposed on a corporation by the legislature or the council of a municipal corporation acting within the scope of the police power[2] or in the exercise of a reserved power to alter the charters.[3]

Foreign corporation.

If a foreign corporation pays a license tax and is given a permit to do business in a state under a statute which provides that foreign corporations thus complying with the conditions prescribed shall be admitted to do business in the state on the same terms as domestic corporations, a statute is void which requires foreign corporations to pay an additional tax not levied on domestic corporations.[4]

Footnotes

1 U.S.—Boise Artesian Hot & Cold Water Co. v. Boise City, 230 U.S. 84, 33 S. Ct. 997, 57 L. Ed. 1400 (1913).

2 U.S.—St. Louis & S.F.R. Co. v. Mathews, 165 U.S. 1, 17 S. Ct. 243, 41 L. Ed. 611 (1897).
La.—Fireside Mut. Life Ins. Co. v. Martin, 223 La. 583, 66 So. 2d 511 (1953).

3 N.Y.—City of New York v. Kingsview Homes, Inc., 84 Misc. 2d 756, 376 N.Y.S.2d 813 (Sup 1975).

4 U.S.—American Smelting & Refining Co. v. People of State of Colorado, 204 U.S. 103, 27 S. Ct. 198, 51 L. Ed. 393 (1907).

16A C.J.S. Constitutional Law § 570

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(1) In General

§ 570. Laws changing, enlarging, or prescribing new remedies for enforcement of obligations under corporate charters

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2695, 2696, 2698, 2706, 2708, 2710, 2711, 2714

Provided they do not impair substantial rights of the corporation laws prescribing changes in, or additional remedies for, the enforcement of obligations imposed by corporate charters are not void as impairing the obligations of contracts.

Laws which do not impose on corporations additional burdens or duties, but which prescribe changes in the remedies, or even additional remedies, for the enforcement of obligations imposed by their charters, are not void as impairing the obligation of contracts.[1] Thus, statutes have been sustained which change the existing law as to who may sue the corporation,[2] prescribe a different form of action,[3] or give a new remedy for the enforcement of a duty imposed by the charter.[4]

A statute is void, however, which, although it purports to relate to matters of remedy only, in fact impairs substantial rights granted the corporation by its charter.[5]

Footnotes

1 Conn.—New Haven Metal & Heating Supply Co. v. Danaher, 128 Conn. 213, 21 A.2d 383 (1941).

2 U.S.—Henley v. Myers, 215 U.S. 373, 30 S. Ct. 148, 54 L. Ed. 240 (1910).

3 R.I.—MacDonald v. New York, N.H. & H.R. Co., 23 R.I. 558, 51 A. 578 (1902).

4 N.Y.—Public Service Commission of First Dist. v. New York Rys. Co., 77 Misc. 487, 136 N.Y.S. 720 (Sup 1912).

5 U.S.—Jarman v. Knights Templars' & Masons' Life Indem. Co. of Ill., 95 F. 70 (C.C.W.D. Mo. 1899), aff'd, 104 F. 638 (C.C.A. 8th Cir. 1900), aff'd, 187 U.S. 197, 23 S. Ct. 108, 47 L. Ed. 139 (1902).

16A C.J.S. Constitutional Law § 571

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(1) In General

§ 571. Repeal or forfeiture of charter

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2706, 2710, 2711, 2712, 2714

Except as such action is proper in the exercise of the police power or the power of eminent domain, the legislature may not repeal a corporate charter unless the right to amend or repeal it is reserved.

Where an act incorporating a corporation, or a general law or state constitution under which it is incorporated, expressly reserves the right to repeal or amend the charter at will, this becomes part of the contract, and a subsequent act revoking the charter or declaring a forfeiture is not an impairment of the original contract.[1]

In the absence of a reservation of power to repeal the charter of a corporation, it is beyond the power of the legislature to repeal the charter,[2] or to provide for its forfeiture on grounds not recognized at the time it was granted.[3] However, a corporation which has actually ceased to exist may be dissolved or its charter forfeited by the legislature when provision is made for the protection of all of the contract rights of the defunct institution and its creditors.[4] In the exercise of the police power, the legislature may

provide for the forfeiture of the charter of a corporation as a penalty for its nonuse or misuse of its corporate powers or for other violations of law.[5]

It is within the power of the legislature to require corporations, such as banks[6] and insurance companies,[7] to suspend business whenever their continuance in business would be hazardous to the public.

Footnotes

1 Mont.—Mid-Northern Oil Co. v. Walker, 65 Mont. 414, 211 P. 353 (1922).
Okla.—LeForce v. Bullard, 1969 OK 14, 454 P.2d 297 (Okla. 1969).

2 U.S.—Chicago, R.I. & P. Ry. Co. v. Ludwig, 156 F. 152 (C.C.E.D. Ark. 1907), aff'd, 216 U.S. 146, 30 S. Ct. 280, 54 L. Ed. 423 (1910).

3 N.M.—State v. Sunset Ditch Co., 1944-NMSC-004, 48 N.M. 17, 145 P.2d 219 (1944).

4 La.—School Board of Caldwell Parish v. Meredith, 139 La. 35, 71 So. 209 (1916).

5 U.S.—Cosmopolitan Club v. Commonwealth of Virginia, 208 U.S. 378, 28 S. Ct. 394, 52 L. Ed. 536 (1908).
Del.—Morford v. Trustees of Middletown Academy, 25 Del. Ch. 58, 13 A.2d 168 (1940).

6 Mass.—Com. v. President, etc., of Farmers' & Mechanics' Bank, 38 Mass. 542, 21 Pick. 542, 1839 WL 2907 (1839).

7 U.S.—Chicago Life Ins. Co. v. Needles, 113 U.S. 574, 5 S. Ct. 681, 28 L. Ed. 1084 (1885).
Ill.—People ex rel. Palmer v. National Bankers Ins. Co. of Lincoln, 369 Ill. 605, 17 N.E.2d 579 (1938).

16A C.J.S. Constitutional Law § 572

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(1) In General

§ 572. Laws providing for settlement of affairs of insolvent corporation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2695, 2696, 2698, 2706, 2708, 2710, 2711, 2714

Statutes providing for the settlement of the affairs of insolvent corporations are not invalid as impairing the obligations of their corporate contracts.

In general, statutes providing for the settlement of the affairs of an insolvent corporation and the distribution of its assets among its creditors are not invalid as impairing the obligation of the contract contained in its charter,[1] especially where the statutes were in full force and effect at the time the corporation was organized,[2] or the contract it is claimed to impair was executed.[3]

A statute providing for the summary seizure by the state superintendent of banks of the property and business of unsafe banks does not violate constitutional provisions against impairing the obligation of contracts.[4]

Footnotes

1 U.S.—Chicago Life Ins. Co. v. Needles, 113 U.S. 574, 5 S. Ct. 681, 28 L. Ed. 1084 (1885).
Ill.—People ex rel. Barrett v. Logan County Building & Loan Ass'n, 369 Ill. 518, 17 N.E.2d 4 (1938).

2 Ala.—McDavid v. Bank of Bay Minette, 193 Ala. 341, 69 So. 452 (1915).

3 Minn.—Hoff v. First State Bank, 174 Minn. 36, 218 N.W. 238 (1928).

4 N.Y.—Richards v. Schwab, 101 Misc. 128, 167 N.Y.S. 535 (Sup 1917).

End of Document

16A C.J.S. Constitutional Law § 573

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(2) Exercise of Power of Taxation

(a) In General

§ 573. Contracts limiting power to tax corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2675

In the absence of a provision in the constitution to the contrary, the legislature may make valid contracts limiting the power of the state to tax corporations, but there is a strong presumption against the existence of such a contract.

The legislature may make valid contracts limiting the power of the state to tax corporations[1] except insofar as such power may be specially prohibited by state constitutional provisions.[2] However, every reasonable presumption will be indulged against the existence of such a contract and the corporation claiming the benefit of it must prove it by clear and satisfactory evidence.[3] If the language of the grant is susceptible of a different construction, it will not be construed as contemplating an absolute and irrevocable exemption.[4]

A statute imposing a tax on a privilege enjoyed by a corporation under a contract with the state impairs the obligation of the contract granting the privilege and the statute is accordingly void.[5] The existence of a valid contract limiting the power of the state to tax a corporation itself does not deprive the State of the power to tax the shares of stock and the bonds of the corporation in the hands of the owners.[6]

As long as a state has not deprived itself of the power to impose taxes on corporations, it may levy on a corporation, domestic or foreign, an excise tax in the nature of a license tax on the privilege of exercising its corporate franchise and transacting business,[7] especially where, at the time the corporate charter was granted, a reserved power to alter, amend, or repeal corporate charters existed.[8]

A privilege or license to do business in a state is not a contract within the meaning of constitutional provisions prohibiting the impairment of contracts so as to prevent the imposition of a privilege tax on fraternal benefit societies doing business within the state.[9]

Footnotes

1 Ala.—Ware Lodge No. 435, A.F. & A.M. v. Harper, 236 Ala. 334, 182 So. 59 (1938).

2 Ala.—City of Mobile v. Stonewall Ins. Co., 53 Ala. 570, 1875 WL 1208 (1875).
Tex.—Gaar, Scott & Co. v. Shannon, 52 Tex. Civ. App. 634, 115 S.W. 361 (1908), aff'd, 223 U.S. 468, 32 S. Ct. 236, 56 L. Ed. 510 (1912).

3 U.S.—City of St. Louis v. United Rys. Co., 210 U.S. 266, 28 S. Ct. 630, 52 L. Ed. 1054 (1908).

4 U.S.—Bank of Commerce v. State of Tennessee, 161 U.S. 134, 16 S. Ct. 456, 40 L. Ed. 645 (1896).

5 Miss.—Gulf & S.I.R. Co. v. Adams, 90 Miss. 559, 45 So. 91 (1907).

6 U.S.—Wright v. Georgia Railroad & Banking Co, 216 U.S. 420, 30 S. Ct. 242, 54 L. Ed. 544 (1910).

7 U.S.—City of St. Louis v. United Rys. Co., 210 U.S. 266, 28 S. Ct. 630, 52 L. Ed. 1054 (1908).
N.Y.—People ex rel. Haim v. Chapman, 274 A.D. 132, 80 N.Y.S.2d 835 (3d Dep't 1948).

8 U.S.—Baldwin Tool Works v. Blue, 240 F. 202 (N.D. W. Va. 1916).
Mont.—Mid-Northern Oil Co. v. Walker, 65 Mont. 414, 211 P. 353 (1922).

9 U.S.—Sovereign Camp, W O W, v. Casados, 21 F. Supp. 989 (D.N.M. 1938), decree aff'd by, 305 U.S. 558, 59 S. Ct. 79, 83 L. Ed. 352 (1938).

16A C.J.S. Constitutional Law § 574

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(2) Exercise of Power of Taxation

(a) In General

§ 574. Taxation at certain rate or by particular method

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2675

Although a valid contract for taxation at a certain rate or by a particular method, embodied in a corporate charter, cannot be impaired, there is a strong presumption against the existence of such a contract.

A contract which may not be impaired by the State may be embodied in the charter of a corporation in the form of provisions for the taxation of the corporation in a particular manner, or at a stipulated rate, or for a certain time, the method or rate provided to be exclusive of all other taxation.[1] The presumption, however, against any contractual limitation of the power of taxation is very strong, and unless it clearly appears that all the requisites of a valid contract exist, provisions in charters[2] or statutes[3] for the taxation of corporations in a particular manner or at a certain rate will be construed as fixing the rate of taxation only until it is changed by the legislature. In fact, this presumption against contractual limitation of the power of taxation has been carried so far as almost to nullify the rule that a valid contract may be made for this purpose.[4]

No contract is established by a provision in the charter of a corporation that it shall pay annually a certain tax,[5] or by a further provision that such payment of earnings or profits shall be in lieu of all other taxes and that in consideration of such annual payments the corporation is to be forever exempt from all taxes.[6]

A statute limiting the assessment of a corporation for purposes of taxation to the amount of its capital stock does not constitute a contract,[7] nor does a general statute imposing on corporations certain taxes in lieu of all others.[8]

Franchises.

On the grant of a franchise by the state or a municipal corporation, it is competent for the parties to make a valid contract as to the rate of the taxation of the franchise or other property of the corporation.[9] However, as in the case of the grant of a charter, the presumption is against any limitation of the taxing power.[10]

Municipal contracts.

It is beyond the power of a municipality and a corporation to so contract with each other as to prevent the legislature from exercising its constitutional powers relating to questions of taxation for the entire state, or as to interfere with the local authorities of other municipalities, or the proper county authorities, in levying taxes on property legally located within such cities and counties.[11]

Footnotes

1 U.S.—Central of Georgia Ry. Co. v. Wright, 248 U.S. 525, 39 S. Ct. 181, 63 L. Ed. 401 (1919), on reh'g, 250 U.S. 519, 40 S. Ct. 1, 63 L. Ed. 1123 (1919).

2 U.S.—Baldwin Tool Works v. Blue, 240 F. 202 (N.D. W. Va. 1916).

3 Pa.—Easton Bank v. Commonwealth, 10 Pa. 442, 1849 WL 5642 (1849).

4 Minn.—State v. Great Northern Ry. Co., 106 Minn. 303, 119 N.W. 202 (1908), aff'd, 216 U.S. 206, 30 S. Ct. 344, 54 L. Ed. 446 (1910).

5 U.S.—In re Delaware R.R. Tax, 85 U.S. 206, 21 L. Ed. 888, 1873 WL 15974 (1873).

6 Minn.—State v. Great Northern Ry. Co., 106 Minn. 303, 119 N.W. 202 (1908), aff'd, 216 U.S. 206, 30 S. Ct. 344, 54 L. Ed. 446 (1910).

7 N.Y.—People ex rel. New York Cent. & H.R.R. Co. v. Mealy, 88 Misc. 649, 152 N.Y.S. 435 (Sup 1915), aff'd, 179 A.D. 951, 165 N.Y.S. 1106 (3d Dep't 1917), aff'd, 224 N.Y. 187, 120 N.E. 155 (1918), aff'd, 254 U.S. 47, 41 S. Ct. 17, 65 L. Ed. 123 (1920).

Where constitution authorizes repeal

A statute could be repealed in view of a subsequent contract showing that the parties did not consider that they had an irrevocable grant and the provisions of the state constitution that all general laws and special acts pursuant to that section might be altered or repealed.

U.S.—People of State of New York ex rel. Troy Union R. Co. v. Mealy, 254 U.S. 47, 41 S. Ct. 17, 65 L. Ed. 123 (1920).

8 U.S.—Wisconsin & M. Ry. Co. v. Powers, 191 U.S. 379, 24 S. Ct. 107, 48 L. Ed. 229 (1903).

9 U.S.—People of State of New York ex rel. Metropolitan Street Ry. Co. v. State Board of Tax Com'rs, 199 U.S. 1, 25 S. Ct. 705, 50 L. Ed. 65 (1905).

10 U.S.—Savannah, Thunderbolt & I H Ry v. Mayor and Aldermen of the City of Savannah, 198 U.S. 392, 25 S. Ct. 690, 49 L. Ed. 1097 (1905).

Utah—Salt Lake City v. Utah Light & Ry. Co., 45 Utah 50, 142 P. 1067 (1914).

11 Va.—Commonwealth ex rel. City of Richmond v. Chesapeake & O. Ry. Co., 118 Va. 261, 87 S.E. 622 (1916).

End of Document

16A C.J.S. Constitutional Law § 575

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(2) Exercise of Power of Taxation

(a) In General

§ 575. Corporate reorganization, name change, merger, or acquisition

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2675

A contractual exemption or limitation on the power of taxation is not lost by a reorganization or change of name of the corporation, but a transfer of the franchises and privileges of one corporation to another will not transfer any right to exemption from taxation or limitation on the rate of taxation possessed by the transferor.

A contractual exemption or limitation on the power of taxation which is enjoyed by a corporation is not lost by a reorganization of the corporation,[1] or even by a change of name,[2] as long as the corporation remains in fact the same. However, a contract right to exemption or to taxation at a certain exclusive rate, to which a corporation is entitled, does not pass to another corporation which acquires its property and franchises.[3] Even a statute which authorizes the transfer of the property, franchises, and privileges of one corporation to another does not authorize a transfer of tax limitations or exemptions.[4]

Moreover, even a state which acquires the property of a corporation, as to which the corporation enjoyed a total or partial exemption from taxation, may not, at a time when the constitution forbids such exemptions, transfer the property to another corporation accompanied by the exemption.[5] Even where the charter of a corporation provides that an exemption from taxation granted by it shall pass to any consolidated corporation into which the original company shall be absorbed, the right to transfer such exemption may be cut off at any time as long as it remains unexecuted.[6]

Footnotes

1 U.S.—Powers v. Detroit, G.H. & M. Ry. Co., 201 U.S. 543, 26 S. Ct. 556, 50 L. Ed. 860 (1906).

2 U.S.—Powers v. Detroit, G.H. & M. Ry. Co., 201 U.S. 543, 26 S. Ct. 556, 50 L. Ed. 860 (1906).

3 Minn.—State v. Chicago Great Western Ry. Co., 106 Minn. 290, 119 N.W. 211 (1908), aff'd, 216 U.S. 234, 30 S. Ct. 353, 54 L. Ed. 460 (1910).
N.J.—State Board of Assessors v. Morris & E.R. Co., 49 N.J.L. 193, 7 A. 826 (N.J. Ct. Err. & App. 1886).

4 U.S.—Pickard v. East Tennessee, V. & G.R. Co., 130 U.S. 637, 9 S. Ct. 640, 32 L. Ed. 1051 (1889).

5 U.S.—Great Northern Ry. Co. v. State of Minnesota, 216 U.S. 206, 30 S. Ct. 344, 54 L. Ed. 446 (1910).

6 U.S.—Yazoo & M.V.R. Co. v. City of Vicksburg, 209 U.S. 358, 28 S. Ct. 510, 52 L. Ed. 833 (1908).

16A C.J.S. Constitutional Law § 576

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(2) Exercise of Power of Taxation

(b) Legislative Grant of Exemption from Taxation

§ 576. Contract exempting corporation from taxation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2719

Although a strong presumption exists against an exemption from taxation, the legislature, in the absence of constitutional prohibitions, may, by a valid contract, exempt a corporation from taxation, which contract is protected by constitutional provisions against impairment of the obligations of contracts.

The Supreme Court of the United States held at a comparatively early date that the state legislature can relinquish to a corporation the right of levying taxes on its property so as to disable future legislatures from exercising the power.[1] This doctrine that the legislature may bargain away or abrogate the taxing power of a state has met with denials by some of the state courts[2] and also with vigorous dissent from some of the members of the United States Supreme Court.[3]

In spite of this conflict of opinion, the rule has been established in favor of the power of the legislature to make a valid contract by charter or statute exempting a corporation from taxation.[4] Although there is some authority to the contrary,[5] as a general rule, a strong presumption exists against such an exemption, and it will not be recognized until all the requisites of a valid contract granting it are clearly and conclusively proved.[6]

Thus, the grant of a franchise to a corporation does not imply a contract exempting the company from taxation, or preclude the subsequent levy of a license tax on the privilege so granted,[7] or prevent the taxation of the franchise, whether general or special, the same as other private property.[8] Also, a statute containing an exemption from taxation does not constitute a contract not to repeal the exemption.[9] The grant of a franchise for the use of the streets in consideration of the payment of money does not imply an exemption from the imposition of license fees.[10]

If a valid contract of exemption exists, no taxes in violation of it may be imposed even by an amendment to the constitution of the state.[11]

Void grant of exemption.

An exemption from taxation is not valid, even where granted in the form of a contract, if all exemptions from taxation are either expressly or by clear implication forbidden by a constitutional provision in force at the time of the grant.[12]

Footnotes

1 U.S.—Jefferson Branch Bank v. Skelly, 66 U.S. 436, 17 L. Ed. 173, 1861 WL 7650 (1861).

2 Ill.—City of East St. Louis v. East St. Louis Gas Light & Coke Co., 98 Ill. 415, 1881 WL 10498 (1881) (overruled in part on other grounds by, East St. Louis & Interurban Water Co. v. City of Belleville, 360 Ill. 490, 196 N.E. 442, 103 A.L.R. 1155 (1935)).

3 U.S.—State of New Jersey v. Yard, 95 U.S. 104, 24 L. Ed. 352, 1877 WL 18564 (1877).

4 Ala.—Opinion of the Justices, 598 So. 2d 1362, 75 Ed. Law Rep. 672 (Ala. 1992).
Vt.—Brattleboro Retreat v. Town of Brattleboro, 106 Vt. 228, 173 A. 209 (1934).

5 Ala.—Ware Lodge No. 435, A.F. & A.M. v. Harper, 236 Ala. 334, 182 So. 59 (1938).

6 U.S.—J.W. Perry Co. v. City of Norfolk, 220 U.S. 472, 31 S. Ct. 465, 55 L. Ed. 548 (1911).
Express statement of exemption required
The local laws of a city imposing a franchise tax, measured by gross income, against utilities would not impair the obligation of the utilities' contracts with the city unless the contracts expressly exempted the utilities from payment of the tax.
U.S.—New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938).

7 U.S.—Memphis Gaslight Co. v. Taxing Dist. of Shelby County, 109 U.S. 398, 3 S. Ct. 205, 27 L. Ed. 976 (1883).

8 N.Y.—People ex rel. Metropolitan St. R. Co. v. State Board of Tax Com'rs, 174 N.Y. 417, 67 N.E. 69 (1903), aff'd, 199 U.S. 1, 25 S. Ct. 705, 50 L. Ed. 65 (1905).

9 U.S.—City of Covington v. Commonwealth of Kentucky, 173 U.S. 231, 19 S. Ct. 383, 43 L. Ed. 679 (1899).

10 U.S.—City of St. Louis v. United Rys. Co., 210 U.S. 266, 28 S. Ct. 630, 52 L. Ed. 1054 (1908).

11 U.S.—Central of Georgia Ry. Co. v. Wright, 248 U.S. 525, 39 S. Ct. 181, 63 L. Ed. 401 (1919), on reh'g, 250 U.S. 519, 40 S. Ct. 1, 63 L. Ed. 1123 (1919).

12 U.S.—Gulf & S.I.R. Co. v. Hewes, 183 U.S. 66, 22 S. Ct. 26, 46 L. Ed. 86 (1901).

End of Document

16A C.J.S. Constitutional Law § 577

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(2) Exercise of Power of Taxation

(b) Legislative Grant of Exemption from Taxation

§ 577. Consideration required for exemption to be valid

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2719

A legislative exemption of a corporation from taxation does not constitute an irrevocable contract unless there is consideration for the grant of exemption.

A legislative exemption of a corporation from taxation does not constitute an irrevocable contract where there is no consideration for the grant of exemption.[1] The acceptance of the charter by the corporation constitutes a sufficient consideration for the exemption.[2]

Other authority, however, is less favorable to the existence of a valid exemption.[3] It is admitted that a consideration exists where it is shown that the corporation not only accepted the charter but also incurred expenditures or liabilities on the faith of its provisions,[4] but it is denied that the mere acceptance of a charter constitutes a consideration for an exemption from taxation

contained therein.[5] This rule is applied not only to corporations organized for profit but also to corporations of a charitable or eleemosynary character.[6] Exemptions granted by a general statute are, of course, without consideration and must be understood as conferring a privilege to be enjoyed only during the pleasure of the legislature.[7]

Footnotes

1 N.Y.—City of Rochester v. Rochester Ry. Co., 182 N.Y. 99, 74 N.E. 953 (1905), aff'd, 205 U.S. 236, 27 S. Ct. 469, 51 L. Ed. 784 (1907).

2 U.S.—Home of the Friendless v. Rouse, 75 U.S. 430, 19 L. Ed. 495, 1869 WL 11615 (1869).

3 U.S.—Wells v. City of Savannah, 181 U.S. 531, 21 S. Ct. 697, 45 L. Ed. 986 (1901).

4 Vt.—Brattleboro Retreat v. Town of Brattleboro, 106 Vt. 228, 173 A. 209 (1934).

5 N.J.—Hanover Tp. v. Camp Meeting Ass'n of Newark Conference, 76 N.J.L. 65, 68 A. 753 (N.J. Sup. Ct. 1908), aff'd, 76 N.J.L. 827, 71 A. 1134 (N.J. Ct. Err. & App. 1908).

6 N.J.—Seton Hall College v. Village of South Orange, 86 N.J.L. 365, 90 A. 1126 (N.J. Ct. Err. & App. 1914), aff'd, 242 U.S. 100, 37 S. Ct. 54, 61 L. Ed. 170 (1916).

7 U.S.—Wisconsin & M. Ry. Co. v. Powers, 191 U.S. 379, 24 S. Ct. 107, 48 L. Ed. 229 (1903).

16A C.J.S. Constitutional Law § 578

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(2) Exercise of Power of Taxation

(b) Legislative Grant of Exemption from Taxation

§ 578. Extent of exemption

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2719

Tax exemption provisions are strictly construed against those claiming the benefit of them and are construed to cover only such property as clearly falls within their terms.

Tax exemption provisions are strictly construed against those claiming the benefit of them, although they are not given a distorted or unreasonable construction,[1] and are construed as to cover only such property as falls clearly within their terms.[2] An exemption of the property of a corporation and the shares therein precludes the taxation of the corporation on either its gross receipts or its capital stock.[3] An exemption of a corporation from all taxation of every kind exempts its property of every kind, including grants, privileges, and franchises secured to it by it charter.[4] An exemption of all the property of a corporation includes franchises

belonging to it,[5] but an exemption of all license, occupation, or special tax or taxes does not exempt a corporation from a tax on its franchise.[6]

Footnotes

1 Vt.—Brattleboro Retreat v. Town of Brattleboro, 106 Vt. 228, 173 A. 209 (1934).

2 U.S.—Millsaps College v. City of Jackson, 275 U.S. 129, 48 S. Ct. 94, 72 L. Ed. 196 (1927).

3 U.S.—Wilmington & W.R. Co. v. Reid, 80 U.S. 264, 20 L. Ed. 568, 1871 WL 14724 (1871).

4 Ill.—Illinois Cent. R. Co. v. Emmerson, 299 Ill. 328, 132 N.E. 471 (1921).

5 U.S.—Wright v. Georgia Railroad & Banking Co, 216 U.S. 420, 30 S. Ct. 242, 54 L. Ed. 544 (1910).

6 Ga.—Macon Ry. & Light Co. v. City of Macon, 136 Ga. 797, 72 S.E. 159 (1911).

16A C.J.S. Constitutional Law § 579

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

B. Contracts Involving States and Municipalities

5. Legislative Control over Private Corporations Affecting or Involving Contract Rights

d. Laws of State Impairing Contractual Obligation

(2) Exercise of Power of Taxation

(b) Legislative Grant of Exemption from Taxation

§ 579. Susceptibility of exemption to abrogation where right to abrogate is reserved

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2719

The right to exemption from taxation is not protected from legislative abrogation where the charter, constitution, or a statute operative at the time the corporation was created or the exemption granted reserves the right to alter, amend, or repeal charters.

The right of a corporation to exemption from taxation is not protected from subsequent legislative abrogation where the charter of the corporation, a constitutional provision, or a general statute of the state operative at the time the corporation was created or the exemption granted, reserves the right to alter, amend, or repeal the charters of corporations.[1] Where a state constitution gives the legislature power to alter or revoke any corporate charter whenever in their opinion the privilege becomes injurious to the public, a grant to a corporation is only in the nature of a license and can be altered, amended, or repealed.[2] However, a contractual exemption from taxation contained in the charter of a corporation may not be repealed without at the same time

relieving the corporation of the burden imposed by the consideration given for the exemption since a rule to the contrary would permit the taking of property without due process of law.[3]

Footnotes

1 U.S.—Wicomico County Com'rs v. Bancroft, 203 U.S. 112, 27 S. Ct. 21, 51 L. Ed. 112 (1906).

2 Pa.—Appeal of Wagner Free Institute, 132 Pa. 612, 19 A. 297 (1890).

3 U.S.—Duluth & I.R.R. Co. v. St. Louis County, 179 U.S. 302, 21 S. Ct. 124, 45 L. Ed. 201 (1900).

16A C.J.S. Constitutional Law II VI C Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Appeal and Error
A.L.R. Index, Constitutional Law
West's A.L.R. Digest, Constitutional Law 2663, 2664, 2668, 2669, 2730 to 2732, 2734 to 2737, 2739, 2740, 2745, 2747 to 2762, 2765, 2766, 2768 to 2770, 2772 to 2775

End of Document

16A C.J.S. Constitutional Law § 580

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 580. Contracts within purview of Contract Clause

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2668, 2669, 2730, 2734, 2735, 2745, 2754, 2757

The Contract Clause of the U.S. Constitution protects a "contract" as the word is used in its ordinary meaning; in order to come within the scope of the clause, however, a contract must be valid in its inception.

The term "contract" is used in the clause of various constitutions forbidding impairment in its ordinary meaning,[1] that is, of an agreement between two or more competent parties, on a valuable consideration, to do or not to do a particular thing.[2] For the rule forbidding the impairment of contracts to apply, it is essential that a contract be in existence,[3] and accordingly, the existence of a contract must first be established before a claim may be pursued under the Contract Clause[4] as it has long been settled that a contract cannot be impaired by a law in effect at the time of the making of the contract, for that is the law which binds the contract.[5] The Contract Clause is aimed at limiting the government's reach in interfering with the obligations of preexisting contracts,[6] and there is no impairment of a contract where the statute does not affect a preexisting contract between private parties.[7] Accordingly, future private contracts are not protected by state and federal contract clauses.[8]

Although the constitutional protection is not restricted to unconditional obligations,[9] the contract, in order to come within the scope of the clause, must be valid in its inception.[10] The constitutional provision does not protect so-called contracts that are inchoate,[11] void,[12] invalid,[13] illegal,[14] or unenforceable.[15] Accordingly, consideration is necessary to bring an executory contract within the protection of the clause.[16] Additionally, only in those contracts in which the parties have a vested interest are the parties afforded protection from impairment under the Contract Clause.[17] The application of the Contract Clause is not limited to laws relieving debtors of obligations to their creditors.[18]

The provision has reference only to those contracts involving property rights[19] and has no application whatever to political rights and privileges.[20] The Constitution does not include within its protection a mere license,[21] or mere unvested and contingent rights under intestacy laws,[22] or a proceeding of adoption or for the abrogation of the relation created thereby,[23] or a state statute confirming a grant of a former sovereign specifying the area included and providing for a survey to ascertain metes and bounds.[24]

In order for there to be a violation of the Contract Clause, a particular contract must be impaired.[25]

A constitutional prohibition against a state's impairment of contracts applies to contracts between private parties, as well as to contracts between the state and a private party.[26] The Contract Clause of the United States Constitution[27] and of state constitutions[28] limits the power of states to modify their own contracts, as well as to regulate those between private parties.

Statute treated as a contract.

The existence of a conventional contract, signed by both parties, is not a predicate to the application of Contract Clause review.[29] A statute will be treated as a contract when its language and the circumstances manifest a legislative intent to create private rights of a contractual nature enforceable against the State.[30] In addition, statutes governing the interpretation and enforcement of contracts may be regarded as forming part of the obligation of contracts made under their aegis.[31] However, before a law may be deemed to amount to a contract between the state and a third party, statutory language must be examined and found to be plain and susceptible to no other reasonable construction than that a contract was intended.[32]

Existence of contract.

The question is whether a contract was made a federal question for purposes of Contract Clause analysis.[33] For purposes of determining whether a statute violates the Contract Clause, the existence of a contractual agreement regarding the specific terms allegedly impacted by the statute in question is a question that must be determined under federal law.[34]

Footnotes

1 Colo.—Weitzel Redi-Mix, Inc. v. Industrial Com'n, 728 P.2d 364 (Colo. App. 1986).

2 U.S.—Crane v. Hahlo, 258 U.S. 142, 42 S. Ct. 214, 66 L. Ed. 514 (1922).
Trust instruments
Trust deeds or indentures have been held contracts.
U.S.—Coolidge v. Long, 282 U.S. 582, 51 S. Ct. 306, 75 L. Ed. 562 (1931).
Pension plans

Rights which accrue under a pension plan are contractual obligations, protected by the contract clauses of state and federal constitutions.

Colo.—Colorado Springs Fire Fighters Ass'n, Local 5 v. City of Colorado Springs, 784 P.2d 766 (Colo. 1989).

Contractual relationship sufficient to trigger review under Contract Clause

(1) A contractual relationship created between bondholders on the one hand, and the assessed property owners or a taxing entity on the other, is constitutionally protected against impairment.

Cal.—Consolidated Fire Protection Dist. of Los Angeles County v. Howard Jarvis Taxpayers' Ass'n, 63 Cal. App. 4th 211, 73 Cal. Rptr. 2d 586 (2d Dist. 1998).

(2) An intercollegiate athletic organization and its Nevada member institutions had a "contractual relationship" sufficient to trigger review under the Contract Clause; in exchange for benefits and privileges that flow from membership in the organization, those institutions agreed to abide by the organization's conditions and obligations of membership as expressed in the organization's constitution.

U.S.—National Collegiate Athletic Ass'n v. Miller, 795 F. Supp. 1476, 76 Ed. Law Rep. 1060 (D. Nev. 1992), aff'd, 10 F.3d 633, 87 Ed. Law Rep. 412 (9th Cir. 1993).

Mutual obligations required

A contract between a landfill operator and a trash collector imposed mutual obligations on the parties and was a valid contract for purposes of Contract Clause analysis.

Pa.—Empire Sanitary Landfill, Inc. v. Com., Dept. of Environmental Resources, 165 Pa. Commw. 442, 645 A.2d 413 (1994), order aff'd, 546 Pa. 315, 684 A.2d 1047 (1996).

3 Idaho—Lindstrom v. District Bd. of Health Panhandle Dist. I, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

N.Y.—Hasenoehrl Leasing, Inc. v. Town of Hamburg, 182 A.D.2d 1091, 583 N.Y.S.2d 79 (4th Dep't 1992).

Enforceability of contractual right not clearly established even at time contract was made

U.S.—Chrysler Corp. v. Kolosso Auto Sales, Inc., 148 F.3d 892 (7th Cir. 1998).

4 U.S.—Conway v. Sorrell, 894 F. Supp. 794 (D. Vt. 1995).

Evidence insufficient

In prosecution for possession of wild or exotic animals, evidence of a defendant's testimony that his mother bought his property was insufficient to establish that the defendant had a contract with the purchasers of his property at the time of the enactment of an ordinance prohibiting the possession of exotic animals as required to support a determination that the passage of ordinance substantially impaired the defendant's contracts in violation of the contract clauses found in the Idaho and U.S. Constitutions.

Idaho—State v. Korn, 148 Idaho 413, 224 P.3d 480 (2009).

Use tax

Requiring an automobile manufacturer to pay use tax on parts and services provided by dealers to fulfill the manufacturer's obligations under warranty and repair programs did not impair the obligation of contracts even though the tax reduced the bargained-for profit on the sale of vehicles; the manufacturer had no contract with the state forbidding taxation.

Ohio—Gen. Motors Corp. v. Wilkins, 102 Ohio St. 3d 33, 2004-Ohio-1869, 806 N.E.2d 517 (2004).

5 U.S.—McGuire v. Ameritech Services, Inc., 253 F. Supp. 2d 988 (S.D. Ohio 2003).

6 Vt.—In re Palmer, 171 Vt. 464, 769 A.2d 623 (2000).

7 S.C.—Mibbs, Inc. v. South Carolina Dept. of Revenue, 337 S.C. 601, 524 S.E.2d 626 (1999).

8 Or.—Eckles v. State, 306 Or. 380, 760 P.2d 846 (1988).

9 Tex.—Spires v. Mann, 173 S.W.2d 200 (Tex. Civ. App. Eastland 1943), writ refused.

10 Tex.—Spires v. Mann, 173 S.W.2d 200 (Tex. Civ. App. Eastland 1943), writ refused.

W. Va.—Cash Service Co. v. Ward, 118 W. Va. 703, 192 S.E. 344 (1937).

11 U.S.—J.W. Frellsen & Co. v. Crandell, 217 U.S. 71, 30 S. Ct. 490, 54 L. Ed. 670 (1910).

Contingent or inchoate rights

Constitutional provisions prohibiting impairment of contractual obligations do not render inviolate mere contingent or speculative interests.

Ga.—Webb v. Whitley, 114 Ga. App. 153, 150 S.E.2d 261 (1966).

12 La.—Whitney Nat. Bank in Jefferson Parish v. James, 189 So. 2d 430 (La. Ct. App. 1st Cir. 1966).

Contract in violation of Consumer Protection Act

Any supposed contract induced by "unfair, false, misleading acts or practices" in violation of the Consumer Protection Act is no contract, ab initio, and therefore is not protected by the Contract Clause of the United States Constitution.

Ky.—Telcom Directories, Inc. v. Com. ex rel. Cowan, 833 S.W.2d 848 (Ky. Ct. App. 1991).

13 Cal.—Walsh v. Board of Administration, 4 Cal. App. 4th 682, 6 Cal. Rptr. 2d 118 (3d Dist. 1992).

14 U.S.—Zane v. Hamilton County, Ill., 189 U.S. 370, 23 S. Ct. 538, 47 L. Ed. 858 (1903).

Cal.—Walsh v. Board of Administration, 4 Cal. App. 4th 682, 6 Cal. Rptr. 2d 118 (3d Dist. 1992).

Pa.—Payne v. Com. Dept. of Corrections, 813 A.2d 918 (Pa. Commw. Ct. 2002), order aff'd in part, rev'd in part on other grounds, 582 Pa. 375, 871 A.2d 795 (2005).

15 Cal.—Walsh v. Board of Administration, 4 Cal. App. 4th 682, 6 Cal. Rptr. 2d 118 (3d Dist. 1992).

16 U.S.—Wisconsin & M. Ry. Co. v. Powers, 191 U.S. 379, 24 S. Ct. 107, 48 L. Ed. 229 (1903).

Cal.—Walsh v. Board of Administration, 4 Cal. App. 4th 682, 6 Cal. Rptr. 2d 118 (3d Dist. 1992).

17 Nev.—Mello v. Woodhouse, 110 Nev. 366, 872 P.2d 337 (1994).

Amendment of articles of incorporation

A nonprofit corporation did not have a vested contract right to amend its articles of incorporation as permitted under a statute in effect at the time of its incorporation, which right could not be impaired constitutionally by a later statute providing for a different method; the statute under which the nonprofit corporation was formed reserved to the legislature the power to prescribe regulations, provisions, and limitations as the legislature would deem appropriate and to amend or repeal or modify the statute at its pleasure.

Fla.—Hopkins v. The Vizcayans, 582 So. 2d 689 (Fla. 3d DCA 1991).

18 U.S.—Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978).

19 Ark.—Anderson v. Webb, 241 Ark. 233, 406 S.W.2d 871 (1966).

Fla.—Mahood v. Bessemer Properties, 154 Fla. 710, 18 So. 2d 775, 153 A.L.R. 1199 (1944).

20 Fla.—State v. City of Miami, 103 Fla. 54, 137 So. 261 (1931).

21 Or.—City of Portland v. Cook, 48 Or. 550, 87 P. 772 (1906).

22 Mo.—Willson v. Carmichael, 665 S.W.2d 52 (Mo. Ct. App. W.D. 1984).

23 N.Y.—In re Ziegler, 82 Misc. 346, 143 N.Y.S. 562 (Sur. Ct. 1913), aff'd, 161 A.D. 589, 146 N.Y.S. 881 (1st Dep't 1914).

24 U.S.—Sullivan v. State of Texas, 207 U.S. 416, 28 S. Ct. 215, 52 L. Ed. 274 (1908).

25 U.S.—Washington Service Contractors Coalition v. District of Columbia, 54 F.3d 811 (D.C. Cir. 1995).

26 Cal.—Board of Administration v. Wilson, 52 Cal. App. 4th 1109, 61 Cal. Rptr. 2d 207 (3d Dist. 1997).

Or.—Does 1, 2, 3, 4, 5, 6, and 7 v. State, 164 Or. App. 543, 993 P.2d 822, 103 A.L.R.5th 661 (1999).

27 U.S.—In re City of Detroit, Mich., 504 B.R. 97 (Bankr. E.D. Mich. 2013).

28 Cal.—Deputy Sheriffs' Association of San Diego County v. County of San Diego, 233 Cal. App. 4th 573, 182 Cal. Rptr. 3d 759 (4th Dist. 2015), review denied, (Apr. 1, 2015).

29 U.S.—National Collegiate Athletic Ass'n v. Miller, 795 F. Supp. 1476, 76 Ed. Law Rep. 1060 (D. Nev. 1992), aff'd, 10 F.3d 633, 87 Ed. Law Rep. 412 (9th Cir. 1993).

30 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).

31 U.S.—U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).

32 N.Y.—Methodist Hosp. of Brooklyn v. State Ins. Fund, 102 A.D.2d 367, 479 N.Y.S.2d 11 (1st Dep't 1984), order aff'd, 64 N.Y.2d 365, 486 N.Y.S.2d 905, 476 N.E.2d 304 (1985).

33 U.S.—General Motors Corp. v. Romein, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 (1992).

34 U.S.—Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425 (D.R.I. 1994).

End of Document

16A C.J.S. Constitutional Law § 581

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 581. Quasi-contracts and implied contracts as within purview of Contract Clause

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2668, 2669, 2734, 2745

Obligations imposed by the law without the assent of the parties bound are not protected by the impairment clause, but implied contracts, based on the assent of the parties, come within the scope of the constitutional protection.

The Contract Clause does not protect expectations which are based upon legal theories other than contract, such as quasi-contract[1] or estoppel.[2]

Footnotes

1 Cal.—Walsh v. Board of Administration, 4 Cal. App. 4th 682, 6 Cal. Rptr. 2d 118 (3d Dist. 1992).
Iowa—Credit Bureau Enterprises, Inc. v. Pelo, 608 N.W.2d 20 (Iowa 2000).

2 Cal.—Walsh v. Board of Administration, 4 Cal. App. 4th 682, 6 Cal. Rptr. 2d 118 (3d Dist. 1992).

End of Document

16A C.J.S. Constitutional Law § 582

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 582. Executed contracts, sales, and conveyances as within purview of Contract Clause

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2753, 2754

The Contract Clause of the Constitution includes executed contracts, such as sales or conveyances, within its protection.

The Contract Clause of the Constitution includes within its protection not only executory but also executed contracts.[1] A statute, therefore, which attempts to deprive either party to a sale or conveyance of any right to which, by its terms, the party is entitled is void,[2] but a statute which does not have this effect will be upheld[3] as in the case of a statute enacted prior to the instrument upon which it operates.[4] Executed contracts, sales, and conveyances, however, are subject to a legitimate exercise of the powers vested in the legislature by the Constitution.[5] An obligation of a party created by a statute, which serves a public purpose, does not constitute an impairment of a contract.[6]

Footnotes

1 Mich.—Thompson v. Auditor General, 261 Mich. 624, 247 N.W. 360 (1933).
N.J.—City of Newark v. Padula, 24 N.J. Super. 483, 94 A.2d 859 (Ch. Div. 1953), judgment aff'd, 26 N.J. Super. 251, 97 A.2d 735 (App. Div. 1953).

2 Ala.—Callahan v. Weiland, 291 Ala. 183, 279 So. 2d 451, 65 A.L.R.3d 1201 (1973).
Fla.—Biltmore Village v. Royal, 71 So. 2d 727, 41 A.L.R.2d 1380 (Fla. 1954).
N.J.—City of Newark v. Padula, 24 N.J. Super. 483, 94 A.2d 859 (Ch. Div. 1953), judgment aff'd, 26 N.J. Super. 251, 97 A.2d 735 (App. Div. 1953).
Retail development rights
Allegations that a developer entered into contracts for the transfer of both real estate and retail development rights and that the transfers of the retail development rights were necessary in order to render feasible the project supported the developer's claim that the retroactive application of a zoning ordinance that allegedly abolished transferable development rights violated the Contract Clause.
U.S.—JSS Realty Co., LLC v. Town of Kittery, Maine, 177 F. Supp. 2d 64 (D. Me. 2001).

3 Kan.—Energy Reserves Group, Inc. v. Kansas Power and Light Co., 230 Kan. 176, 630 P.2d 1142 (1981), judgment aff'd, 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).
Retroactive application of zoning ordinance
Me.—Kittery Retail Ventures, LLC v. Town of Kittery, 2004 ME 65, 856 A.2d 1183 (Me. 2004).

4 Ga.—Screamer Mountain Development, Inc. v. Garner, 234 Ga. 590, 216 S.E.2d 801 (1975).
Mass.—Com. v. DeCotis, 366 Mass. 234, 316 N.E.2d 748, 89 A.L.R.3d 387 (1974).
Unfair Trade Practices Act
Allowing sales representatives to recover against sellers on a claim under the Connecticut Unfair Trade Practices Act (CUTPA) did not impair the sellers' contractual rights in violation of the Contract Clause when CUTPA was enacted before the parties entered into the underlying sales representative agreement.
U.S.—Fabri v. United Technologies Intern., Inc., 387 F.3d 109, 59 Fed. R. Serv. 3d 1192 (2d Cir. 2004).

5 U.S.—Sign Supplies of Texas, Inc. v. McConn, 517 F. Supp. 778 (S.D. Tex. 1980).
Ga.—Payne v. Borkat, 244 Ga. 615, 261 S.E.2d 393 (1979).
Reverter and rights of entry
Or.—Kilpatrick v. Snow Mountain Pine Co., 105 Or. App. 240, 805 P.2d 137 (1991).
Prohibited pass-on of tax increases
Although a statute prohibiting producers from passing through to consumers increases in a severance tax on oil and gas extracted from state wells affected contractual obligations of which the producers were the beneficiaries the pass-through prohibition did not violate the Contract Clause as it imposed a generally applicable rule of conduct, the main effect of which was to shield consumers from the burden of tax increases, and its effect on existing contracts permitting the producers to pass an increase through to consumers was only incidental.
U.S.—Exxon Corp. v. Eagerton, 462 U.S. 176, 103 S. Ct. 2296, 76 L. Ed. 2d 497 (1983).
No societal necessity
The retroactive application of a statute precluding restrictive covenants barring the residential use of property as a facility for developmentally disabled or mentally ill persons violates the Indiana contract clause; although the state's general police power authorizes the legislature's enactment of laws which promote the mainstreaming of such persons by prohibiting future subdivision contract restrictions, the statutory impairment of existing restrictive covenants does not fall within the necessary police power exception to the state constitutional contract clause because of the absence of societal necessity.
Ind.—Clem v. Christole, Inc., 582 N.E.2d 780 (Ind. 1991).

6 U.S.—Morseburg v. Balyon, 621 F.2d 972 (9th Cir. 1980).

End of Document

16A C.J.S. Constitutional Law § 583

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 583. Real estate leases as within purview of Contract Clause

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2755, 2756

The Contract Clause of the Constitution includes leases within its protection.

The obligation of contract embodied in a lease is protected by the constitutional provision against impairment by adverse legislation or judicial action,[1] and the rights and obligations of the parties are fixed by their agreement of lease, and no subsequent enactment should enlarge or diminish such rights or obligations.[2] The retroactive application of an enactment to a lease may impair the obligation of contract.[3] However, a claim of impairment of a lease must allege the legislative act impaired a lease in existence at the time the act became effective.[4] Leases, however, are subject to valid exercises of the police power or legitimate state purposes,[5] the war power,[6] and the power of eminent domain.[7] The exercise of the state police power, however, must be sufficient to override the Contract Clause rights of a lessor and lessee, and if not, a statute violates the Contract Clause.[8]

Since the rental industry is a highly regulated industry in many jurisdictions, ordinances and regulations governing and controlling evictions are not necessarily an impermissible impairment of contract rights under a lease.[9] For example, given the

state's long history of housing regulation, the retroactive application of a statute that regulates the conversion of apartments to condominium units by providing certain tenants with addition rights does not violate state or federal constitutional proscriptions on impairment of contracts since it did not operate as a substantial impairment of vested rights in light of the state's long history of housing regulation.[10] On the other hand, for purposes of determining whether a statute conferring rights on tenants to purchase their building in the event of a contemplated sale of the building, as applied to a master lease agreement covering a building, violated the Contract Clause rights of a lessor and a lessee, the agreement would be deemed to substantially impair contractual obligations, as the parties had a reasonable expectation that they could obtain the benefits bargained for under the contract, as there had been no prior history of government regulations of apartment building leases.[11]

If the impairment is severe, a court will scrutinize eviction control legislation with care in order to determine whether the legislation was justified by a significant and legitimate public purpose or unconstitutionally impinged on rights secured by the Contract Clause.[12] An ordinance, which prohibited commercial lessors from terminating a lease except for certain enumerated causes substantially impaired the parties' contract in a manner which the lessors could not have expected at the time they entered into the lease, notwithstanding the city's history of commercial zoning and rent control regulation, where prior legislation had placed no controls on commercial evictions, established no administrative procedure to arbitrate rent increases, and placed no limitations on the owner's right to personally recover possession.[13] Furthermore, a statute providing continued tenancy for certain nonpurchasing tenants when multiple dwellings are subject to cooperative or condominium conversion impairs a landlord's right to a consent judgment, a contract, without serving a public end by a means reasonably adapted to accomplishment of that end without being arbitrary or oppressive and is thus unconstitutional.[14]

A statute allowing a landlord to unreasonably withhold consent to an assignment if the landlord releases the tenant from the lease does not impair a tenant's contract rights in the lease when the lease does not confer a greater right to assign.[15] A city did not impair the obligation of contracts by enforcing regulations that allegedly caused the operators of recreational marinas not to renew leases for the claimants' floating structures.[16]

City ordinances regulating the location of adult stores did not violate the constitutional Contract Clause with respect to leases between stores and landlord where those parties entered into their leases cognizant of the city's right to adopt ordinances affecting the sale of sexually explicit material.[17]

Requiring an advertising company to remove without compensation highway billboards which did not have nonconforming status and which were illegally erected did not impair the advertising company's obligation of contracts by impairing its lease of the land for the erection of the signs and its contract for construction of the signs.[18] Moreover, a city ordinance which allowed the replacement of nonconforming signs did not unconstitutionally impair a billboard company's contracts with landowners; the leases permitting the company to place its billboards on the landowners' lands were terminated under the terms of the periodic lease agreements, which were entered into prior to the enactment of the ordinance, and once the company's leaseholds were terminated, all rights the company had in the nonconforming use of its billboards were extinguished.[19]

The presence or absence of a liquor permit did not affect the bargained-for terms of an off-sale liquor license holder's lease nor did it change the enforceability of the lease, and thus, the Contract Clause was not implicated by the referendum results of a local option election, in which voters elected to prohibit sales of particular kinds of liquor sales within the precinct.[20] Similarly, a smoking ban in the Clean Indoor Air Act did not impair a billiards parlor operator's lease contract with a landlord, as necessary for the Act to violate the constitutional provision barring laws impairing the obligation of contracts, despite a contention that decreased revenues caused by the ban impaired the operator's ability to make payments on the lease; the Act did not alter the terms of lease or make any term invalid or unenforceable, and any effect on revenue was incidental and unrelated to the lease.[21]

Footnotes

1 Cal.—Standard Fireproof Bldg. Co. v. Carpenter, 79 Cal. App. 2d 330, 180 P.2d 53 (2d Dist. 1947).
Miss.—Superior Oil Co. v. Beery, 59 So. 2d 689 (Miss. 1952).
Declaration of condominium and master condominium land sublease
Fla.—Sans Souci v. Division of Florida Land Sales and Condominiums, 448 So. 2d 1116 (Fla. 1st DCA 1984).

2 N.J.—Sbrolla v. Hess, 23 N.J. Misc. 229, 43 A.2d 498 (Cir. Ct. 1945), judgment aff'd, 24 N.J. Misc. 261, 44 A.2d 36 (Sup. Ct. 1945).
Wis.—State ex rel. Bldg. Owners & Managers Ass'n of Milwaukee, Inc. v. Adamany, 64 Wis. 2d 280, 219 N.W.2d 274 (1974).
Statute establishing presumption of unconscionability with respect to leases
Fla.—Beeman v. Island Breakers, A Condominium, Inc., 577 So. 2d 1341 (Fla. 3d DCA 1990), opinion corrected on other grounds, 591 So. 2d 1031 (Fla. 3d DCA 1991).
Unconstitutional impairment of landlords' contractual rights
The application of a statute compelling private landowners to pay tenants, solely at the tenants' option, for leasehold improvements, to a residential lease already in effect when the statute was enacted was an unconstitutional impairment of the landlords' contractual rights, particularly where the landlords were subject to criminal penalties for the failure to purchase improvements for cash within 30 days upon the expiration of a lease.
Haw.—Anthony v. Kualoa Ranch, Inc., 69 Haw. 112, 736 P.2d 55 (1987).
Substantial impairment
A Hawaii statute requiring any appraiser involved in a rent determination under a lease of a specified lessor's commercial or industrial land to consider factors not required by the lessor's leases ran afoul of the Contract Clause; the statute, which affected the leases of land owned by only a single entity, substantially impaired the lessor's contractual rights by precluding the lessor from even asking appraisers to calculate rent without regard to a lessee's actual use of the leased property, and the statute was not reasonably designed to further its stated public purpose of stabilizing Hawaii's economy.
U.S.—HRPT Properties Trust v. Lingle, 715 F. Supp. 2d 1115 (D. Haw. 2010).

3 Fla.—Coastal Petroleum Co. v. Department of Environmental Protection, 672 So. 2d 574 (Fla. 1st DCA 1996).
Ohio—Burtner-Morgan-Stephens Co. v. Wilson, 63 Ohio St. 3d 257, 586 N.E.2d 1062 (1992).
Prospective application proper
Cal.—Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside, 157 Cal. App. 3d 887, 204 Cal. Rptr. 239 (4th Dist. 1984).
No retroactive application
A statute allowing the members of a condominium association to cancel a lease entered into by the association before it was turned over to the unit owners could not be retroactively applied to lease entered into by condominium association before the effective date of the statute; application of statute to lease would unconstitutionally impair the obligation of contract.
Fla.—Jupiter Ocean and Racquet Club Condominium Ass'n, Inc. v. Courtside Properties of Palm Beach, LLC, 17 So. 3d 854 (Fla. 4th DCA 2009).

4 Wis.—Laskaris v. City of Wisconsin Dells, Inc., 131 Wis. 2d 525, 389 N.W.2d 67 (Ct. App. 1986).
Without contract, there can be no impairment
Cal.—Briarwood Properties, Ltd. v. City of Los Angeles, 171 Cal. App. 3d 1020, 217 Cal. Rptr. 849 (2d Dist. 1985).
Lease executed after enactment
(1) Dormant mineral interests act does not unconstitutionally impair obligation of contracts since, if mineral owners did not execute any leases after the statutory lapse of their mineral rights, the statute could not be said to impair a contract that did not exist at the time of its enactment.
U.S.—Texaco, Inc. v. Short, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982).
(2) Municipal ordinances dealing with light, ventilation, and heating facilities in occupied dwellings and prohibiting the disconnection of such dwellings' utilities did not violate the constitutional prohibition against

the impairment of obligation of contracts where a landlord conceded that the lease in question was entered into after the ordinances were adopted.

Ind.—Chandley Enterprises, Inc. v. City of Evansville, 563 N.E.2d 672 (Ind. Ct. App. 1990).

(3) A city rent stabilization law did not impair landlords' lease agreements with rent-stabilized tenants, in violation of the Contract Clause, where the law was enacted and became applicable to property many years before landlords took ownership of it.

U.S.—Harmon v. Markus, 412 Fed. Appx. 420 (2d Cir. 2011).

No substantial impairment

A city ordinance which approved a development plan for a lot adjacent to a landlord's property that would allegedly infringe on a commercial tenant's leasehold interests, which extended to the adjacent lot, and caused the landlord to violate its duty under the lease to prevent interference with the tenant's leasehold rights, did not operate as a substantial impairment of a contractual relationship as required to establish a claim against the city for violation of the Contract Clause; the parties to lease could not have reasonably expected that the property would be free from zoning ordinances that permitted commercial development on a lot, given that the ordinance that was in effect when the lease was executed allowed the same type of commercial development, and the ordinance did not change any of the terms of the lease.

U.S.—TF-Harbor, LLC v. City of Rockwall, Tex., 18 F. Supp. 3d 810 (N.D. Tex. 2014).

5 U.S.—Chicago Bd. of Realtors v. City of Chicago, 673 F. Supp. 224 (N.D. Ill. 1986), judgment aff'd, 819 F.2d 732 (7th Cir. 1987); King Enterprises, Inc. v. Thomas Township, 215 F. Supp. 2d 891 (E.D. Mich. 2002).

Iowa—CMC Real Estate Corp. v. Iowa Dept. of Transp., Rail and Water Div., 475 N.W.2d 166 (Iowa 1991).

Legislative exercise of power to protect health

Ky.—Morgan v. Natural Resources and Environmental Protection Cabinet, 6 S.W.3d 833 (Ky. Ct. App. 1999).

Rent control laws

Mass.—Quinn v. Rent Control Bd. of Peabody, 45 Mass. App. Ct. 357, 698 N.E.2d 911 (1998).

N.Y.—Freeport Randall Co. v. Herman, 83 A.D.2d 812, 441 N.Y.S.2d 826 (1st Dep't 1981), order aff'd, 56 N.Y.2d 832, 452 N.Y.S.2d 566, 438 N.E.2d 99 (1982).

Rent abatement or withholding

N.Y.—Farrell v. Drew, 19 N.Y.2d 486, 281 N.Y.S.2d 1, 227 N.E.2d 824 (1967).

Pa.—DePaul v. Kauffman, 441 Pa. 386, 272 A.2d 500, 40 A.L.R.3d 810 (1971).

Rebate of property tax

N.J.—Cold Indian Springs Corp. v. Ocean Tp., 154 N.J. Super. 75, 380 A.2d 1178 (Law Div. 1977), judgment aff'd, 161 N.J. Super. 586, 392 A.2d 175 (App. Div. 1978), judgment aff'd, 81 N.J. 502, 410 A.2d 652 (1980).

Improving quality of life in neighborhood and addressing neighborhood's blight

Even if a referendum result in a local option election to make a precinct dry imposed more than a minimal change to a liquor license holder's lease of a grocery store, the vote was a reasonable and narrowly tailored means of promoting the voters' legitimate interests in improving the quality of life in their neighborhood and addressing the neighborhood's blight and, thus, did not violate the Contract Clause.

U.S.—M & F Supermarket, Inc. v. Owens, 997 F. Supp. 908 (S.D. Ohio 1997).

Ordinance necessary and reasonable to legitimate purposes of preserving health and safety of occupants

The constitutional prohibition against the impairment of the obligation of contracts did not invalidate a municipal ordinance that provided that utilities of occupied dwellings could not be disconnected; the ordinance was necessary and reasonable to legitimate purposes of preserving the health and safety of occupants, preventing landlords from constructively evicting occupants, and preserving the status quo pending judicial determination of the parties' rights.

Ind.—Chandley Enterprises, Inc. v. City of Evansville, 563 N.E.2d 672 (Ind. Ct. App. 1990).

Permit for fireworks buyers

A city ordinance requiring fireworks buyers to obtain a permit from the city was a valid exercise of the city's police power and thus did not violate the Contract Clause due to the fact that a fireworks retailer's lease was rendered worthless as a result of the ordinance.

U.S.—Davken, Inc. v. City of Daytona Beach Shores, FL, 366 Fed. Appx. 40 (11th Cir. 2010).

6 U.S.—U.S. v. Friedman, 89 F. Supp. 957 (S.D. Iowa 1950); U.S. v. Asher, 90 F. Supp. 257 (W.D. Mo. 1950).

7 Mo.—State ex rel. Atkinson v. Planned Indus. Expansion Authority of St. Louis, 517 S.W.2d 36, 98 A.L.R.3d 663 (Mo. 1975).

8 D.C.—West End Tenants Ass'n v. George Washington University, 640 A.2d 718 (D.C. 1994).

Heavy regulation; foreseeability; public purpose

The decision of a board of county commissioners to amend zoning regulations to prohibit commercial wind farms in the entire county did not violate the Federal Constitution's Contract Clause with respect to landowners who had entered into written contracts for the development of commercial wind farms on their properties; the subject matter of the contract, land use and electrical power, was heavily regulated; the changes in the law altering contractual obligations were foreseeable; the contracts were entered into after the board had declared a moratorium on the acceptance of applications for conditional use permits for wind farm projects; the regulation served significant public purposes; and the board's chosen means were reasonable and necessary.

Kan.—Zimmerman v. Board of County Com'rs, 289 Kan. 926, 218 P.3d 400 (2009), subsequent determination, 293 Kan. 332, 264 P.3d 989 (2011).

9 Cal.—Danekas v. San Francisco Residential Rent Stabilization and Arbitration Bd., 95 Cal. App. 4th 638, 115 Cal. Rptr. 2d 694 (1st Dist. 2001).

Wash.—Margola Associates v. City of Seattle, 121 Wash. 2d 625, 854 P.2d 23 (1993).

No substantial impairment

A village ordinance did not violate the constitutional prohibition against impairment of contract even though it could require a landlord to evict tenants based on a violation of the building code; the ordinance did not substantially impair the existing leases between landlords and tenants since both parties were subject to the Landlord-Tenant Act when they entered into lease, the Act provided that leases were subject to applicable housing and building codes, and the ordinance was a valid exercise of police power.

Ohio—Mariemont Apartment Assn. v. Village of Mariemont, 2007-Ohio-173, 2007 WL 120727 (Ohio Ct. App. 1st Dist. Hamilton County 2007)

10 N.J.—Edgewater Inv. Associates v. Borough of Edgewater, 201 N.J. Super. 267, 493 A.2d 11 (App. Div. 1985), judgment aff'd, 103 N.J. 227, 510 A.2d 1178 (1986).

11 D.C.—West End Tenants Ass'n v. George Washington University, 640 A.2d 718 (D.C. 1994).

12 U.S.—Ross v. City of Berkeley, 655 F. Supp. 820 (N.D. Cal. 1987).

13 U.S.—Ross v. City of Berkeley, 655 F. Supp. 820 (N.D. Cal. 1987).

14 N.Y.—19th Street Associates v. State, 172 A.D.2d 380, 568 N.Y.S.2d 771 (1st Dep't 1991), order aff'd, 79 N.Y.2d 434, 583 N.Y.S.2d 811, 593 N.E.2d 265 (1992).

15 N.Y.—Levai v. Alcoma Corp., 106 A.D.2d 292, 483 N.Y.S.2d 4 (1st Dep't 1984).

16 U.S.—Scott v. City of Seattle, 99 F. Supp. 2d 1263 (W.D. Wash. 1999).

17 Wash.—World Wide Video of Washington, Inc. v. City of Spokane, 125 Wash. App. 289, 103 P.3d 1265 (Div. 3 2005).

18 Mo.—State ex rel. Nat. Advertising Co. v. State Highway and Transp. Com'n, 703 S.W.2d 514 (Mo. Ct. App. W.D. 1985).

19 Neb.—The Lamar Co., LLC v. City of Fremont, 278 Neb. 485, 771 N.W.2d 894 (2009).

20 U.S.—M & F Supermarket, Inc. v. Owens, 997 F. Supp. 908 (S.D. Ohio 1997).

21 Neb.—Big John's Billiards, Inc. v. State, 288 Neb. 938, 852 N.W.2d 727 (2014).

End of Document

16A C.J.S. Constitutional Law § 584

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 584. Mortgages, pledges, bills, and notes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2754, 2760 to 2762, 2769

Mortgages and pledges are within the protection of the Contract Clause.

Mortgages and pledges are recognized as within the protection of the Contract Clause of the Constitution,[1] and the obligations thereof may not be directly impaired by legislation.[2] Moreover, since the rights and obligations of the parties are fixed by their agreement, no subsequent enactment should enlarge or diminish such rights or obligations.[3] Mortgages are subject to the State's police power, and a statute enacted pursuant to a valid exercise of the police power does not impair the obligation of contract when applied to a mortgage executed prior to the enactment of the statute,[4] and mortgages are subject to the retroactive application of a statute when such application is necessitated by legitimate legislative purposes[5] or justified by a legitimate[6] or substantial[7] public interest. However, the retroactive application of a statute may impair the obligation of a contract when such application would violate both the obligation of the parties' contract and destroy vested property rights acquired by the parties.[8]

Statutes which do not directly impair the obligation of contract involved in a mortgage will be sustained,[9] as will those which only minimally impair the obligation of contract, especially when the statute's purpose is to further a legitimate public purpose.[10] Although a regulation may effect a mortgage agreement, when the parties enter into the agreement knowing that certain provisions are subject to government regulation, there is no impairment of the mortgage obligation.[11]

Bills and notes.

A statute is void which attempts to change the rights of a party to a bill of exchange or promissory note executed before its passage.[12] A provision which, by its terms, applies to promissory notes executed after its passage in renewal of notes executed before has been held not to be unconstitutional, since the old notes are extinguished by those given in renewal,[13] but there is also authority to the contrary.[14]

Footnotes

1 Pa.—Beaver County Building & Loan Ass'n v. Winowich, 323 Pa. 483, 187 A. 921 (1936).

2 U.S.—In re Preble Corp., 12 F. Supp. 1002 (D. Me. 1935), aff'd, 84 F.2d 73 (C.C.A. 1st Cir. 1936).
Fla.—Sepielli v. Wilson P. Abraham Const. Corp., 313 So. 2d 122 (Fla. 3d DCA 1975).

3 Mich.—Spitzer v. Brown, 305 Mich. 455, 9 N.W.2d 673, 146 A.L.R. 1096 (1943).
N.J.—Fidelity Union Trust Co. v. Multiple Realty & Const. Co., 131 N.J. Eq. 527, 26 A.2d 155 (Ch. 1942).
Tex.—Lamar Life Ins. Co. v. Jordan, 163 S.W.2d 215 (Tex. Civ. App. Waco 1942), writ refused w.o.m., (Sept. 30, 1942).
Position of lien
A county ordinance providing for the recording of administrative fines and according them a priority superior to all others except tax liens was an unconstitutional impairment of a contractual relationship as applied to a contract according a mortgagee a first-priority lien against the mortgagor's property.
Fla.—Sarasota County v. Andrews, 573 So. 2d 113 (Fla. 2d DCA 1991).

4 Or.—State By and Through Director of Veterans' Affairs v. Petersen, 94 Or. App. 314, 766 P.2d 386 (1988), decision aff'd, 308 Or. 632, 784 P.2d 1076 (1989).

5 **Retroactive application of Multi-Family Mortgage Act**
U.S.—Lisbon Square v. U.S., 856 F. Supp. 482 (E.D. Wis. 1994).
Mere clarification rather than substantive change in law
Or.—Federal Deposit Ins. Corp. v. Burdell, 307 Or. 285, 766 P.2d 1032 (1988).

6 N.M.—Los Quatros, Inc. v. State Farm Life Ins. Co., 1990-NMSC-082, 110 N.M. 750, 800 P.2d 184 (1990).

7 N.J.—Chase Manhattan Bank v. Josephson, 135 N.J. 209, 638 A.2d 1301 (1994).

8 U.S.—In re Simmons, 129 B.R. 84, 15 U.C.C. Rep. Serv. 2d 1129 (Bankr. N.D. W. Va. 1991).

9 U.S.—Jamaica Sav. Bank v. Lefkowitz, 390 F. Supp. 1357 (E.D. N.Y. 1975), judgment aff'd, 423 U.S. 802, 96 S. Ct. 10, 46 L. Ed. 2d 23 (1975).
N.Y.—Rogers v. Williamsburgh Sav. Bank, 79 Misc. 2d 852, 361 N.Y.S.2d 531 (Dist. Ct. 1974).
Taxes as prior lien
A municipal ordinance providing that hotel occupancy taxes would be a prior and superior lien on hotel property did not unconstitutionally impair a mortgagee's rights in the property pursuant to a preexisting deed of trust where the ordinance did not effect the means by which the mortgagee could enforce the rights afforded under the deed of trust.
Tex.—City of Amarillo v. Ray Berney Enterprises, Inc., 764 S.W.2d 861 (Tex. App. Amarillo 1989).

10 Me.—Sinclair v. Sinclair, 654 A.2d 438 (Me. 1995).

11 Mass.—Hingham Healthcare Ltd. Partnership v. Division of Health Care Finance and Policy, 439 Mass. 643, 790 N.E.2d 647 (2003).

12 Conn.—Mazurkiewicz v. Dowholonek, 111 Conn. 65, 149 A. 234 (1930).

Tex.—Lamar Life Ins. Co. v. Jordan, 163 S.W.2d 215 (Tex. Civ. App. Waco 1942), writ refused w.o.m., (Sept. 30, 1942).

All holders of notes that are absolute promises to pay are protected from impairment

U.S.—In re Board of Directors of Multicanal S.A., 307 B.R. 384 (Bankr. S.D. N.Y. 2004).

13 Mo.—Walker v. Dunham, 135 Mo. App. 396, 115 S.W. 1086 (1909).

14 Fla.—Board of Public Instruction for Bay County v. State ex rel. Barefoot, 145 Fla. 482, 199 So. 760 (1941).

End of Document

16A C.J.S. Constitutional Law § 585

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 585. Guaranty and suretyship contracts

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2761

Contracts of guaranty and suretyship are within the protection of the Contract Clause of the Constitution.

A statute which attempts to enlarge, vary, or in any way modify the rights or obligations of a surety as expressed in a bond executed before its passage is void.[1] However, a statute which does not have such an effect on the rights and obligations of a surety will be sustained.[2]

A statute limiting a state's preference to assets of an insolvent depositary is not void as an impairment of the surety's contractual rights since subrogation rights are not contractual.[3] Where a bond is expressly made subject to subsequent legislation, such a subsequent statute is not invalid as impairing the obligation of the contract.[4]

Footnotes

1 U.S.—International Steel & Iron Co. v. National Sur. Co., 297 U.S. 657, 56 S. Ct. 619, 80 L. Ed. 961 (1936).
Ky.—Cotton v. Walton-Verona Independent Graded School Dist., 295 Ky. 478, 174 S.W.2d 712 (1943).

2 **Bankruptcy Act inapplicable**
Ark.—First American Nat. Bank v. Coffey-Clifton, Inc., 276 Ark. 250, 633 S.W.2d 704 (1982).

3 Iowa—Andrew v. U.S. Bank of Des Moines, 205 Iowa 883, 213 N.W. 531 (1927).

4 Ga.—National Sur. Corp. v. Gatlin, 192 Ga. 293, 15 S.E.2d 180 (1941).

End of Document

16A C.J.S. Constitutional Law § 586

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 586. Contracts for services

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2668, 2669, 2734, 2745, 2747 to 2752, 2757

Although contracts for services are protected by the Contract Clause of the Constitution, they are subject to a proper exercise of power, such as the police power, which is vested in the legislature.

A statute is not invalid because of its application to the relation of employer and employee,[1] or to that of principal and agent,[2] where there is no existing contract between the parties for a definite time beyond that at which the statute is to take effect. Of course, if a statute is in existence at the time when a contract of employment is entered into, it is not open to the objection that it impairs the obligation of the contract.[3] Legislative enactments properly within the scope of the police power are valid although by their terms, they apply to and affect antecedent contracts for the performance of services.[4] Likewise, provisions effecting existing employment related contracts do not violate the Contract Clause if they are sufficiently related to legitimate state interests and sufficiently tailored to meet those interests.[5]

On the other hand, statutes not within the scope of the police power are void to the extent that they impair the obligation of existing contracts of employment[6] as, for example, a statute which attempts to alter a provision in an existing contract of employment as to the amount of compensation to be paid[7] or one which attempts to regulate pensions to be paid by the employer under contracts theretofore executed.[8] For purposes of analyzing a claimed violation of a state constitutional contract clause, compensation for work performed according to the parties' employment agreement is of great importance, supporting a determination that the impairment of the right to compensation at the contractually specified level is substantial.[9]

A statute which imposes a license fee on a resident agent of a nonresident principal is valid notwithstanding its effect on the contract of employment.[10] Furthermore, any existing transcribing contracts were not "impaired" by the repeal of a rule allowing indefinite temporary certification of uncertified court reporters, where the repealing rule provided a one-year grace period to pass the certification examination, since under such circumstances, the uncertified reporters' failure to pass the examination, rather than repeal of rule, impaired such contracts.[11]

Right-to-work laws, providing that no person shall be denied employment because of nonmembership in a labor organization, are not violative of the obligation of Contract Clause.[12]

Footnotes

1 U.S.—Madden v. Lykes Bros-Ripley S S Co, 311 U.S. 690, 61 S. Ct. 69, 85 L. Ed. 446 (1940).

2 N.C.—City of Wilmington v. Bryan, 141 N.C. 666, 54 S.E. 543 (1906).

3 Idaho—State, ex rel. Dept. of Labor and Indus. Services v. Hill, 118 Idaho 278, 796 P.2d 155 (Ct. App. 1990).
Wis.—State v. Corcoran, 186 Wis. 2d 616, 522 N.W.2d 226 (Ct. App. 1994).

4 U.S.—General Offshore Corp. v. Farrelly, 25 V.I. 226, 743 F. Supp. 1177 (D.V.I. 1990).
Solid waste management
(1) A town's solid waste management scheme, under which town residents had to use the town's designated contractor to collect and haul their refuse, or haul their own refuse to the contractor's site, was reasonable and necessary to the important public objectives of reducing cost and assuring reliable collection, and thus, the scheme did not unconstitutionally impair other waste disposal companies' contracts with their customers.
U.S.—Houlton Citizens' Coalition v. Town of Houlton, 11 F. Supp. 2d 105 (D. Me. 1998), aff'd as modified on other grounds, 175 F.3d 178 (1st Cir. 1999).
(2) Municipal solid-waste authorities stated a claim against the department of revenue for impairing obligations of contract by imposing a solid waste disposal fee, by alleging that they were unable to pass along fee to all of their customers, including those from out of state, commonwealth agencies, and entities with which contracts were in place.
Pa.—Northern Tier Solid Waste Authority v. Com., 825 A.2d 793 (Pa. Commw. Ct. 2003).
Not least intrusive option
A city's goal of providing economically viable curbside recycling program to all of its residents was a legitimate public purpose, and thus did not violate the Contract Clause, even if the city's decision was not the least intrusive option, where the city initially provided all interested parties an opportunity to submit competing bids, the city chose a candidate it felt most closely could meet the goal when it found no bids to its liking, and the city did not prohibit curbside collection of recyclable waste within the city by other companies.
U.S.—Waste Connections of Kansas, Inc. v. City of Bel Aire, Kan., 191 F. Supp. 2d 1238 (D. Kan. 2002).
Economic legislation
A city resolution and county ordinance setting conditions for the issuance of building permits for private construction projects based on required wages that had to be paid by private employers to their employees was economic legislation for the benefit of particular union members, although the stated objectives were

the promotion of safety and a reduction of dependents on government subsidies, and thus, the legitimate public purpose required to allow the substantial impairment of contractual relationships did not exist.

U.S.—Associated Builders & Contractors, Golden Gate Chapter Inc. v. Baca, 769 F. Supp. 1537 (N.D. Cal. 1991), aff'd, 64 F.3d 497 (9th Cir. 1995).

5 Colo.—Colorado Dept. of Public Health and Environment v. Bethell, 60 P.3d 779 (Colo. App. 2002).

Ill.—Alarm Detection Systems, Inc. v. Village of Hinsdale, 326 Ill. App. 3d 372, 260 Ill. Dec. 599, 761 N.E.2d 782 (2d Dist. 2001).

Minn.—Highland Chateau, Inc. v. Minnesota Dept. of Public Welfare, 356 N.W.2d 804 (Minn. Ct. App. 1984).

Reasonable exercise of the State's sovereign power to protect employees

Cal.—Skyline Homes, Inc. v. Department of Industrial Relations, 165 Cal. App. 3d 239, 211 Cal. Rptr. 792 (4th Dist. 1985) (disapproved of on other grounds by, Tidewater Marine Western, Inc. v. Bradshaw, 14 Cal. 4th 557, 59 Cal. Rptr. 2d 186, 927 P.2d 296 (1996)).

Retroactive application not impairment of contract

La.—Sawicki v. K/S Stavanger Prince, 802 So. 2d 598 (La. 2001).

Existing public utility contractual arrangements not consistent with public interest

N.C.—State ex rel. Utilities Com'n v. Buck Island, Inc., 162 N.C. App. 568, 592 S.E.2d 244 (2004).

Regulations limiting areas in places of employment in which smoking permissible

U.S.—Operation Badlaw, Inc. v. Licking County General Health Dist. Bd. of Health, 866 F. Supp. 1059 (S.D. Ohio 1992), judgment aff'd, 991 F.2d 796 (6th Cir. 1993).

Sufficient showing of reasonableness and necessity

Md.—East Prince Frederick Corp. v. Board of County Com'rs of Calvert County, 320 Md. 178, 577 A.2d 27 (1990).

Paid sick leave

An ordinance requiring the provision of paid sick leave to employees working in the city did not violate the state and federal constitutional prohibitions against impairment of contracts; even if the ordinance's impairment of collective bargaining agreements was substantial, the ordinance had a significant and legitimate public purpose, and the ordinance was reasonable and necessary to meet that purpose.

Wis.—Metropolitan Milwaukee Ass'n of Commerce, Inc. v. City of Milwaukee, 2011 WI App 45, 332 Wis. 2d 459, 798 N.W.2d 287 (Ct. App. 2011).

A.L.R. Library

Validity, construction, and effect of state laws requiring payment of wages on discharge of employee immediately or within specified period, 18 A.L.R.5th 577.

Validity, construction, and effect of state laws requiring payment of wages on resignation of employee immediately or within specified period, 11 A.L.R.5th 715.

6 Ala.—Faircloth v. Folmar, 252 Ala. 223, 40 So. 2d 697 (1949).

Ind.—State ex rel. Tittle v. Covington Community Consol. Schools, 229 Ind. 208, 96 N.E.2d 334 (1951).

Hospital governance

Special law pertaining to hospital governance constituted an "impairment of a contract" under a state constitutional provision prohibiting the passage of any bill of attainder, ex post facto law, or law impairing the obligation of contracts, where the special law dramatically altered many of the rights and obligations specified in a contract between a medical center staff and the medical center's board of trustees.

Fla.—Lawnwood Medical Center, Inc. v. Seeger, 959 So. 2d 1222 (Fla. 1st DCA 2007), decision aff'd, 990 So. 2d 503 (Fla. 2008).

7 N.Y.—Boswell v. Security Mut. Life Ins. Co., 193 N.Y. 465, 86 N.E. 532 (1908).

Military leave

A statute requiring an employer to pay employees during a period of military leave is an impairment of the employer's contract.

Ala.—White v. Associated Industries of Alabama, Inc., 373 So. 2d 616, 8 A.L.R.4th 696 (Ala. 1979).

8 U.S.—Standard Oil Co. of Louisiana v. Porterie, 12 F. Supp. 100 (E.D. La. 1935).

Unconstitutional impairment

(1) Legislative changes that impair or adversely affect vested pensions unconstitutionally impair contractual rights.

Wash.—Bates v. City of Richland, 112 Wash. App. 919, 51 P.3d 816 (Div. 3 2002).

(2) Constitutional provision that prohibits laws impairing the obligation of contracts bars diminishing the pension benefits of current employees or retirees.

Pa.—Upper Moreland Tp. v. Upper Moreland Tp. Police Benev. Ass'n, 55 A.3d 541 (Pa. Commw. Ct. 2012).

9 Alaska—Hageland Aviation Services, Inc. v. Harms, 210 P.3d 444 (Alaska 2009).

10 U.S.—Kehrer v. Stewart, 197 U.S. 60, 25 S. Ct. 403, 49 L. Ed. 663 (1905).

11 Haw.—Applications of Herrick, 82 Haw. 329, 922 P.2d 942 (1996).

12 U.S.—American Federation of Labor v. American Sash & Door Co., 335 U.S. 538, 69 S. Ct. 258, 93 L. Ed. 222, 6 A.L.R.2d 481 (1949); Lincoln Federal Labor Union No. 19129, A.F. of L. v. Northwestern Iron & Metal Co., 335 U.S. 525, 69 S. Ct. 251, 93 L. Ed. 212, 6 A.L.R.2d 473 (1949).

A.L.R. Library

Validity, Construction, and Application of State Right-to-Work Provisions, 105 A.L.R.5th 243.

End of Document

16A C.J.S. Constitutional Law § 587

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 587. Workers' compensation acts under federal or state contract clauses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2668, 2669, 2734, 2745, 2751

A workers' compensation act does not impair the obligation of contracts of employment entered into after it takes effect.

A workers' compensation act will not usually be held to impair the obligation of contracts of employment entered into after it takes effect,[1] or after it has been enacted, although not yet in effect.[2] Neither does such a statute, insofar as it affects the right of action, or incidents thereof, for a subsequent injury, impair the obligation of existing contracts.[3] Accordingly, it may modify or abolish common-law defenses to an action for such an injury.[4] Furthermore, optional acts do not affect the obligation of contracts since the parties by acceptance or rejection of the statute may be held to have made a new contract.[5]

The retroactive application of a provision of a worker's compensation statute has been held proper when it furthers a significant and legitimate public purpose, in a reasonable and appropriate manner.[6] Further, it has been held that the retroactive application of a new workers' compensation rehabilitation statute to a worker injured prior to the enactment of the statute did not

unconstitutionally impair the obligation of contracts as to an employer and insurer where the rehabilitation obligations of the employer and insurer had not already become fixed and vested.[7]

The view has been taken that the benefits and liabilities arising out of a workers' compensation statute do not create rights protected by the contract clause of the federal or state constitutions.[8] Further, employers cannot rely on the level of workers' compensation benefits existing at the time of an injury as a legitimate contractual expectation protected by the Contract Clause.[9] Even though a contract may have been entered into prior to the enactment of a workers' compensation law, if that law is found not to be an implied term of the contract, and any amendment to the statute does not change the legal enforceability of the employment contracts in question, there is no impairment of contract.[10] It has been said that for purposes of Contract Clause analysis, provisions regarding the amount of workers' compensation benefits payable to injured employees become terms of a contract only to the extent agreed upon by the parties or incorporated by operation of law.[11]

It has been held that a workers' compensation act provision eliminating the borrowed employee doctrine does not impair the obligation of a contract even when applied retroactively.[12] Also, a workers' compensation act's failure to grant a health care provider standing to pursue a claim under the act does not violate the Contract Clause, at least when the act does not preclude the provider from bringing a contract action against an employee, employer, or carrier, under the common law.[13]

Attorney's fees.

An amendment to a worker's compensation statute limiting attorney's fees is not invalid as unconstitutionally impairing an attorney's right to contract when the attorney undertakes the representation of a claimant after the amendment's effective date.[14] A reduction of attorney's fees established by an agreement between an attorney and a workers' compensation claimant as a result of an amendment to the workers' compensation statute subsequent to the date of the attorney's fees agreement did not violate the constitutional prohibition against impairments of contracts as the parties were on notice that the field in which they were contracting was subject to close regulation.[15]

Footnotes

1 Ark.—Hagger v. Wortz Biscuit Co., 210 Ark. 318, 196 S.W.2d 1 (1946).
Ky.—Blackburn v. Lodestar Energy, Inc., 2006 WL 3771088 (Ky. 2006), as corrected, (Jan. 9, 2007).

2 N.J.—Sexton v. Newark District Telegraph Co., 84 N.J.L. 85, 86 A. 451 (N.J. Sup. Ct. 1913), aff'd, 86 N.J.L. 701, 91 A. 1070 (N.J. Ct. Err. & App. 1914).

3 Kan.—Estate of Baker, 222 Kan. 127, 563 P.2d 431 (1977).

4 N.J.—Sexton v. Newark District Telegraph Co., 84 N.J.L. 85, 86 A. 451 (N.J. Sup. Ct. 1913), aff'd, 86 N.J.L. 701, 91 A. 1070 (N.J. Ct. Err. & App. 1914).

5 Ky.—Taylor's Adm'r v. Bates & Rogers Const. Co., 196 Ky. 206, 244 S.W. 693 (1922).

6 Wis.—Chappy v. Labor and Industry Review Com'n, 128 Wis. 2d 318, 381 N.W.2d 552 (Ct. App. 1985), decision aff'd, 136 Wis. 2d 172, 401 N.W.2d 568 (1987).

7 Minn.—Sherman v. Whirlpool Corp., 386 N.W.2d 221 (Minn. 1986).
Changes with respect to discretionary and mandatory provisions
An amended workers' compensation statute requiring private carriers to deposit into a trust fund the present value of an unscheduled permanent partial disability award has been held to not violate the Contract Clause of the United States Constitution. Prior to the amendment in that case, the state's workers' compensation board could, at its discretion, require a carrier to deposit the present value of the award into the ATF, and the amendment merely made what was once discretionary mandatory.
N.Y.—Raynor v. Landmark Chrysler, 18 N.Y.3d 48, 936 N.Y.S.2d 63, 959 N.E.2d 1011 (2011).

8 Mich.—Szymczak v. Holland Community Hosp., 187 Mich. App. 142, 466 N.W.2d 352 (1991).

No basis for construing provisions of Workers' Compensation Act in contractual terms

The retroactive application to workers' compensation claimants of a statutory amendment which set forth a new formula for determining the award of benefits for hearing loss did not constitute an unconstitutional impairment of the obligation of contracts; there was no basis for construing the provisions of the Workers' Compensation Act in contractual terms.

Pa.—Bible v. Com., Dept. of Labor and Industry, 548 Pa. 247, 696 A.2d 1149 (1997).

9 Mich.—Romein v. General Motors Corp., 436 Mich. 515, 462 N.W.2d 555 (1990), aff'd, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 (1992).

10 U.S.—General Motors Corp. v. Romein, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 (1992).

11 U.S.—Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425 (D.R.I. 1994).

12 U.S.—Nieves v. Hess Oil Virgin Islands Corp., 819 F.2d 1237 (3d Cir. 1987).

13 S.C.—Roper Hosp. v. Clemons, 326 S.C. 534, 484 S.E.2d 598 (Ct. App. 1997).

14 Ky.—Daub v. Baker Concrete, 25 S.W.3d 124 (Ky. 2000).

As to statutes effecting attorney's fees as impairing obligations of contracts, see § 588.

15 W. Va.—Hicks v. Wilson, 182 W. Va. 660, 391 S.E.2d 350 (1990).

End of Document

16A C.J.S. Constitutional Law § 588

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 588. Limitations on attorney's fees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2668, 2669, 2734, 2745, 2747, 2751, 2754

Various statutory provisions relating to limitations on attorney's fees have been found not to constitute the impairment of contractual obligations.

Various statutory provisions relating to limitations on attorney's fees have been found not to constitute the impairment of contractual obligations.[1] A provision of an enactment appropriating money to pay a claim against the United States, that not more than a portion of it shall be paid an attorney for services in connection therewith, does not impair the obligation of claimant's contract, since the appropriation could not be compelled,[2] and an attorney's right to fees for services rendered under a contract in a delinquent tax suit is not vested so as to render unconstitutional a statute remitting tax penalties and depriving attorneys of fees.[3] Likewise, the retrospective application of a court rule fixing limits on contingent fee arrangements in certain kinds of tort cases does not impair the obligation of contingent fee contracts made and partly performed prior to its effective date.[4] Furthermore, a statute governing a limitation on attorney contingency fees in personal injury, wrongful death, and property damage actions does not constitute an unconstitutional impairment of contract; the remedial purpose of the legislation is to

protect the public from overreaching attorneys, and the impairment does not restrict a client's access to counsel, but rather, it limits the fees counsel may charge in specified circumstances.[5] The application of an amended attorney's fees statute to a suit filed subsequent to the amendments would not be unconstitutionally retroactive impairment of contractual obligations.[6]

A state's compulsory attorney's fees arbitration system does not unconstitutionally impair attorneys' contractual rights, as any impairment of an attorney-client contract is not substantial in that it did not change the terms of the contract but merely dictates the forum in which disputes are adjudicated, and in any event, such impairment is justified by the legitimate state purpose of maintaining public confidence in the judicial system.[7] Likewise, a rule requiring the arbitration of fee disputes between lawyers from different law firms did not substantially impair or alter the rights or obligations of an attorney's fees agreement and, thus, did not violate the constitutional prohibition against the enforcement of laws which impaired obligation of contracts, as the rule simply dictated the forum in which attorney's contractual rights and obligations would be adjudicated, and it did not alter any of essential terms of fee agreement.[8]

On the other hand, by arbitrarily decreasing the amount of attorney's fees from a 40% contingency fee, as provided for in an employment contract, to a 33.3% contingency fee, a chancellor abused his discretion and violated the constitutional provision prohibiting the impairment of contractual obligations.[9] Likewise, an industrial commission's act of sua sponte reducing uncontested attorney's fees agreements impaired the obligation of contracts as the commission did not give advance notice to the parties directly involved and acted without properly enacted regulations or a meaningful hearing.[10]

CUMULATIVE SUPPLEMENT

Cases:

As a general matter, monetary assessments are traditionally a form of civil remedy such that their retroactive application would not violate the Ex Post Facto Clause. U.S.C.A. Const. Art. 1, § 10, cl. 1; West's NMSA Const. Art. 2, § 19. State ex rel. Foy v. Austin Capital Management, Ltd., 2015-NMSC-025, 355 P.3d 1 (N.M. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Fla.—Ingraham By and Through Ingraham v. Dade County School Bd., 450 So. 2d 847, 17 Ed. Law Rep. 1278 (Fla. 1984).
Ill.—Kaufman, Litwin and Feinstein v. Edgar, 301 Ill. App. 3d 826, 235 Ill. Dec. 183, 704 N.E.2d 756 (1st Dist. 1998).

2 U.S.—Capital Trust Co. v. Calhoun, 250 U.S. 208, 39 S. Ct. 486, 63 L. Ed. 942 (1919).
W. Va.—Black v. Crouch, 85 W. Va. 22, 100 S.E. 749 (1919).

3 Mo.—State ex rel. McKittrick v. Bair, 333 Mo. 1, 63 S.W.2d 64 (1933).

4 N.J.—McMullen v. Conforti & Eisele Inc., 67 N.J. 416, 341 A.2d 334 (1975).

5 Conn.—Parnoff v. Yuille, 139 Conn. App. 147, 57 A.3d 349 (2012), certification denied, 307 Conn. 956, 59 A.3d 1192 (2013).

6 Idaho—Bott v. Idaho State Bldg. Authority, 122 Idaho 471, 835 P.2d 1282 (1992).

7 U.S.—Guralnick v. Supreme Court of New Jersey, 747 F. Supp. 1109 (D.N.J. 1990), judgment aff'd, 961 F.2d 209 (3d Cir. 1992).

8 Ohio—Shimko v. Lobe, 124 Ohio App. 3d 336, 706 N.E.2d 354 (10th Dist. Franklin County 1997).

9 Miss.—In re Guardianship of Savell, 876 So. 2d 308 (Miss. 2004).

10 Idaho—Curr v. Curr, 124 Idaho 686, 864 P.2d 132 (1993).

End of Document

16A C.J.S. Constitutional Law § 589

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 589. Judgments and other final judicial pronouncements

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2734, 2745, 2769

A judgment is not ordinarily deemed a contract in the constitutional sense, but there is also authority to the contrary.

In some jurisdictions, a judgment is not deemed a contract in the constitutional sense[1] although in other jurisdictions, a contrary view is taken.[2] Where the rights of parties to a contract are settled by a judgment, the legislature may not change such rights by subsequent enactments.[3] A judgment rendered for the breach of a contractual obligation is not a contract, but a statute impairing the remedies for its enforcement would impair the obligation to enforce which it was rendered, and such a statute is, therefore, unconstitutional.[4]

Footnotes

1 U.S.—Missouri & Arkansas Lumber & Mining Co. v. Greenwood Dist. of Sebastian County, Ark., 249 U.S. 170, 39 S. Ct. 202, 63 L. Ed. 538 (1919).
Pa.—Commissioners of Sinking Fund of City of Philadelphia v. City of Philadelphia, 324 Pa. 129, 188 A. 314, 113 A.L.R. 202 (1936).
As to modification of divorce judgments, see § 590.

2 Cal.—Caminetti v. Pacific Mut. Life Ins. Co. of Cal., 22 Cal. 2d 344, 139 P.2d 908 (1943).
Ind.—Heath v. Fennig, 219 Ind. 629, 40 N.E.2d 329 (1942).

3 Va.—Shoosmith v. Scott, 217 Va. 290, 227 S.E.2d 729 (1976), on reh'g, 217 Va. 789, 232 S.E.2d 787 (1977).

4 U.S.—City of Wheeling v. John F. Casey Co., 89 F.2d 308 (C.C.A. 4th Cir. 1937).
Pa.—Commissioners of Sinking Fund of City of Philadelphia v. City of Philadelphia, 324 Pa. 129, 188 A. 314, 113 A.L.R. 202 (1936).

End of Document

16A C.J.S. Constitutional Law § 590

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

a. Nature of Contracts Protected by Contractual Guarantee

§ 590. Contracts pertaining to marriage and related matters

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2759

Marriage is not a contract within the protection of the Contract Clause of the Constitution, and state legislatures may regulate the marriage status and matters related thereto.

Marriage is properly a status or relation created by contract, regulated, when formed, by law,[1] and it is not a contract within the Contract Clause of the Constitution,[2] and marital rights and obligations are not within the scope of the constitutional protection.[3] Therefore, the state legislature may regulate the marriage status and matters relating thereto, together with the rights and duties involved in it,[4] particularly where the statute was enacted prior to the incurring of any obligation upon which it operates.[5] Thus, the legislature may regulate the grounds for divorce.[6]

The legislature may also deal with various matters consequent upon a divorce without impairing the marital contract.[7] Provisions for alimony,[8] maintenance,[9] and child support,[10] especially those which have been incorporated into divorce judgments, may be modified by the courts, under, or apart from, legislative authority, without impairing a contractual obligation. The equitable

distribution provision of a divorce code is a legitimate exercise of a state's police power, and application of that provision to property acquired during the parties' marriage does not impair a spouse's contractual rights.[11]

The nonenforcement of a provision of an antenuptial agreement precluding maintenance is not an unconstitutional impairment of a contract.[12] On the other hand, a contract between the parties for the payment of money in lieu of alimony, which has been approved by the court but not incorporated into a divorce decree, is not a judicial award of alimony and cannot be impaired by legislation.[13] A statute dealing with a spouse's right to take an elective share in a deceased spouse's augmented estate would not be given force retroactively so as to impair a postnuptial agreement between a husband and wife by allowing the wife to take an elective share in the husband's estate since retroactive application under such circumstances would unconstitutionally impair the agreement.[14] However, under one view, the application to an antenuptial agreement of a statute defining marital assets to include the appreciation of nonmarital assets resulting from marital efforts or the expenditure of marital assets does not constitute an unconstitutional impairment of a preexisting contract where the statute is not a change in the law but a codification of existing case law.[15]

An award of attorney's fees does not constitute an impairment of a contract which is silent on the subject.[16] Furthermore, the application of the interim attorney's fees provision of the Marriage and Dissolution of Marriage Act does not violate the contract clauses of the federal and state constitutions, where the interim attorney's fees award under the Act did not substantially impair any contractual obligation that the parties had regarding attorney's fees in violation of the Contract Clause, notwithstanding that the parties waived the right to attorney's fees in a premarital agreement.[17]

Military retirement benefits.

A divorce court's exercise of statutory authority to modify a dissolution judgment, by awarding a portion of a husband's military pension to the wife, did not unconstitutionally impair any contract between parties as the wife's petition for dissolution was not an offer to contract, which the husband accepted by allowing a default judgment to be entered against him.[18] A statute modifying res judicata to permit the amendment of previously final dissolution decrees to allow a disposition of military retirement benefits as community property does not violate the Contract Clause.[19] A divorce statute, permitting a court to modify an existing property settlement to include a division of the husband's military retirement benefits, did not unconstitutionally impair the husband's contract rights, where the husband offered no evidence of any actions taken in reliance on the settlement agreement, and the parties had agreed to a "substantially equal" division of other community property.[20]

Footnotes

1 Colo.—In re Marriage of Franks, 189 Colo. 499, 542 P.2d 845 (1975).
Conn.—Gluck v. Gluck, 181 Conn. 225, 435 A.2d 35 (1980).
Ill.—Kujawinski v. Kujawinski, 71 Ill. 2d 563, 17 Ill. Dec. 801, 376 N.E.2d 1382 (1978).

2 Colo.—In re Marriage of Franks, 189 Colo. 499, 542 P.2d 845 (1975).
Conn.—Gluck v. Gluck, 181 Conn. 225, 435 A.2d 35 (1980).
Ill.—Kujawinski v. Kujawinski, 71 Ill. 2d 563, 17 Ill. Dec. 801, 376 N.E.2d 1382 (1978).
N.Y.—Townes v. Coker, 35 Misc. 3d 543, 943 N.Y.S.2d 823 (Sup 2012).
Social relation
A marriage is not a contract within the meaning of the clause of the constitution which prohibits impairing the obligation of contracts; it is rather a social relation like that of a parent and a child, the obligations of which arise not from the consent of concurring minds, but are the creation of the law itself, a relation the most important, as affecting the happiness of individuals, the first step from barbarism to incipient civilization, the purest tie of social life, and the true basis of human progress.

Ala.—Ex parte State ex rel. Alabama Policy Institute, 2015 WL 892752 (Ala. 2015).

3 Cal.—In re Marriage of Walton, 28 Cal. App. 3d 108, 104 Cal. Rptr. 472 (4th Dist. 1972).

4 Colo.—In re Marriage of Franks, 189 Colo. 499, 542 P.2d 845 (1975).

N.Y.—Yoli v. Yoli, 55 Misc. 2d 416, 285 N.Y.S.2d 470 (Sup 1967).

Modification or abolishment

Rights growing out of the marriage relationship may be modified or abolished by the legislature without violating the provisions of the federal or New York constitutions.

N.Y.—Filstein v. Bromberg, 36 Misc. 3d 404, 944 N.Y.S.2d 692 (Sup 2012).

Modification of separation agreement

Ill.—Josic v. Josic, 78 Ill. App. 3d 347, 33 Ill. Dec. 871, 397 N.E.2d 204 (1st Dist. 1979).

5 Mo.—In re Marriage of Haggard, 585 S.W.2d 480 (Mo. 1979).

6 Colo.—In re Marriage of Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Conn.—Gluck v. Gluck, 181 Conn. 225, 435 A.2d 35 (1980).

Fla.—Ryan v. Ryan, 277 So. 2d 266 (Fla. 1973).

7 N.Y.—Coffman v. Coffman, 60 A.D.2d 181, 400 N.Y.S.2d 833 (2d Dep't 1977) (holding that a statute creating a cause of action allowing a divorced spouse to seek recovery for rights the divorced spouse was deprived of by the action of the other spouse in converting a separation decree into a final divorce judgment was not unconstitutional).

8 Ala.—Hampton v. Hampton, 720 So. 2d 949 (Ala. Civ. App. 1998).

Me.—Lindsley v. Lindsley, 374 A.2d 311 (Me. 1977).

Ohio—Wolfe v. Wolfe, 46 Ohio St. 2d 399, 75 Ohio Op. 2d 474, 350 N.E.2d 413 (1976).

Statute antedating agreement

Fla.—Frizzell v. Bartley, 372 So. 2d 1371 (Fla. 1979).

9 Minn.—Karon v. Karon, 417 N.W.2d 717 (Minn. Ct. App. 1988), judgment rev'd on other grounds, 435 N.W.2d 501 (Minn. 1989).

10 Tex.—Harkins v. State on Behalf of Mason, 773 S.W.2d 401 (Tex. App. Houston 14th Dist. 1989).

Wyo.—Pauling v. Pauling, 837 P.2d 1073 (Wyo. 1992).

Extension of age of majority

The retroactive application of an amended statute, which extended, for child support purposes, the age of majority to a child's 19th birthday or graduation from secondary school, whichever occurred first, did not impair a father's contractual rights guaranteed by the Contract Clause of the United States Constitution even though a settlement agreement incorporated in the parties' divorce judgment provided that the father would pay child support until the child was 18 years old; the duty to support one's child could not be waived by contract.

Md.—Bornemann v. Bornemann, 175 Md. App. 716, 931 A.2d 1154 (2007).

Review of support orders

A statute governing the review of cost of living adjustments to child support orders, by permitting a court to review the order to determine whether an adjustment is warranted based on Child Support Standards Act guidelines, did not violate the Contract Clause of the Federal Constitution; ensuring that children receive adequate support was an important public purpose, and the review of support orders was a reasonable and necessary means of accomplishing that goal.

N.Y.—Tompkins County Support Collection Unit ex rel. Chamberlin v. Chamberlin, 99 N.Y.2d 328, 756 N.Y.S.2d 115, 786 N.E.2d 14 (2003).

11 Pa.—Nuttall v. Nuttall, 386 Pa. Super. 148, 562 A.2d 841 (1989).

12 Ind.—Rider v. Rider, 669 N.E.2d 160 (Ind. 1996).

13 **Provision for termination of maintenance on remarriage**

Va.—Shoosmith v. Scott, 217 Va. 789, 232 S.E.2d 787 (1977).

14 S.D.—Matter of Estate of Gab, 364 N.W.2d 924 (S.D. 1985).

15 Fla.—Hahamovitch v. Hahamovitch, 133 So. 3d 1008 (Fla. 4th DCA 2014), review dismissed, 145 So. 3d 824 (Fla. 2014) and review granted, 145 So. 3d 824 (Fla. 2014).

16 Colo.—In re Marriage of Franks, 189 Colo. 499, 542 P.2d 845 (1975).

17 Ill.—Marriage of Rosenbaum-Golden and Golden, 381 Ill. App. 3d 65, 319 Ill. Dec. 27, 884 N.E.2d 1272 (1st Dist. 2008).

18 Or.—Matter of Marriage of Dee, 96 Or. App. 252, 772 P.2d 444 (1989).

19 Cal.—In re Marriage of Potter, 179 Cal. App. 3d 73, 224 Cal. Rptr. 312 (5th Dist. 1986).

20 Cal.—In re Marriage of Carpenter, 188 Cal. App. 3d 604, 231 Cal. Rptr. 783 (1st Dist. 1986).

End of Document

16A C.J.S. Constitutional Law § 591

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

b. Impairment of Obligation

§ 591. What constitutes an obligation of contract

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2663, 2664, 2668, 2730, 2736

The obligation of a contract is the law which binds the parties to perform their agreement.

The obligation of a contract, within the context of a constitutional prohibition against the impairment of the obligation of contracts, is the law which binds the parties to perform their agreement.[1] It is the duty of performance coupled with the right and means of enforcement.[2]

An agreement which imposes a moral, but not a legal, obligation is not within the protection of the constitution.[3] An expectancy based upon an anticipated continuance of existing law is not an obligation of a contract within the protection of the constitutional guaranty;[4] and a mere understanding or expectation, arising from one or more sales, that the seller will continue to make sales to the same purchasers does not constitute an obligation entitled to protection.[5]

Footnotes

1 U.S.—Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934).

Law at time of making

The obligation of a contract within constitutional prohibition against impairment is determined by law in force when it was made.

U.S.—W.B. Worthen Co. ex rel. Bd. of Com'rs of Street Imp. Dist. No. 513 of Little Rock, Ark. v. Kavanaugh, 295 U.S. 56, 55 S. Ct. 555, 79 L. Ed. 1298, 97 A.L.R. 905 (1935).

2 Colo.—Alpha Corporation v. Denver-Greeley Valley Irr. Dist., 110 Colo. 179, 132 P.2d 448 (1942).

Mich.—Spitzer v. Brown, 305 Mich. 455, 9 N.W.2d 673, 146 A.L.R. 1096 (1943).

3 Fla.—King v. Duval County, 128 Fla. 388, 174 So. 817 (1937).

4 Ill.—Josic v. Josic, 78 Ill. App. 3d 347, 33 Ill. Dec. 871, 397 N.E.2d 204 (1st Dist. 1979).

5 U.S.—Tanner v. Little, 240 U.S. 369, 36 S. Ct. 379, 60 L. Ed. 691 (1916); Rast v. Van Deman & Lewis Co., 240 U.S. 342, 36 S. Ct. 370, 60 L. Ed. 679 (1916).

End of Document

16A C.J.S. Constitutional Law § 592

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

b. Impairment of Obligation

§ 592. Impairment of contract obligation; demonstrating the violation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2671, 2730, 2734 to 2736

Any enactment of a legislative character which attempts to take from a party a right to which the party is entitled by the terms of a contract, or which deprives the party of the means of enforcing such a right, impairs the obligation of the contract, but there is no impairment where the existing rights are neither taken away nor diminished.

Any enactment of a legislative character is said to "impair" the obligation of a contract which attempts to take from a party a right to which the party is entitled by its terms or which deprives the party of the means of enforcing such a right,[1] relieves one party of all of its obligations under the contract,[2] or lessens the value of a contract.[3] The facts being undisputed, whether an obligation of contract has been impaired, is a question of law.[4]

To show a violation of the Contract Clause, a plaintiff must establish that the state impaired its contract, and that the impairment was substantial,[5] so not every impairment of contract will violate the Contract Clause,[6] but preexisting contractual obligations may be impaired by subsequent changes in laws that modify their obligations.[7] For a statute to offend the constitutional

prohibition against the impairment of contracts, it must have the effect of changing the substantive rights of the parties to the existing contract.[8] Without violating the Contract Clause, the State may alter the terms of a private contract to either lighten or increase obligations, save where its activities constitute a substantial alteration of the terms of the contract.[9]

Generally, a law which does not strike at the vitality of a contract either by altering its terms or preventing its preservation and enforcement does not impair its obligation.[10] Accordingly, for example, although an enactment may affect the income stream of a business, if the parties' obligations under contracts are not changed in favor of one party against another, no impair contract rights have been impaired.[11] Further, a statute which does not act on the contract itself may not be said to impair the obligation of the contract, as where it acts merely on the property which is the subject of the contract,[12] where it is merely an exercise of the legislative power to limit and control the right to contract,[13] where it does not directly cancel or adjust any contract.[14] In case of doubt as to the construction of either statute or contract, that construction will be preferred by which no impairment will result.[15] While the total destruction of contractual expectations is not necessary for a finding of a substantial impairment in violation of the Contract Clause,[16] no matter how severe the impairment,[17] a state regulation that restricts a party to gains it reasonably expected from a contract does not necessarily constitute a substantial impairment.[18]

The mere fact that a legislative act is contrary to industry custom and practice does not mandate a finding that the act impairs private contractual rights.[19]

Existing and future contracts.

The Contract Clause prohibits only statutes which impair existing contracts,[20] and a statute enacted before the making of a contract cannot impair its obligation.[21]

Retroactive application of statute.

Generally speaking, a law cannot be applied retroactively when it will impair obligations of contract or divest or impair vested rights[22] although retroactive application of statutory amendments has been allowed when sufficiently justified.[23]

Federal statutes.

Where a private contract is impaired by a federal statute, judicial scrutiny is quite minimal.[24] To prevail on a claim that federal legislation impairs a private contractual right, the plaintiff bears the burden of demonstrating, first, that the statute alters contractual rights or obligations, and only if an impairment is found does the court go on to determine whether the impairment is of constitutional dimension.[25]

CUMULATIVE SUPPLEMENT

Cases:

A law does not impair the obligation of a contract, within the meaning of the Constitution, if neither party is relieved thereby from performing anything of that which he obligated himself to do. U.S. Const. art. 1, § 10, cl. 1. Jennissen v. City of Bloomington, 938 N.W.2d 808 (Minn. 2020).

[END OF SUPPLEMENT]

Footnotes

1 Fla.—Commodore Plaza at Century 21 Condominium Ass'n, Inc. v. Cohen, 378 So. 2d 307 (Fla. 3d DCA 1979).
Iowa—McGrory v. Board of Trustees of Municipal Elec. Utility of City of Cascade, 232 N.W.2d 262 (Iowa 1975).
Neb.—U.S. Brewers' Ass'n, Inc. v. State, 192 Neb. 328, 220 N.W.2d 544 (1974).
N.C.—Adair v. Orrell's Mut. Burial Ass'n, Inc., 284 N.C. 534, 201 S.E.2d 905 (1974).
Substantially diminishing contractual rights
Government regulations that substantially diminish contractual rights may create unconstitutional impairment of the contract.
U.S.—Callaway Community Hosp. v. Sullivan, 784 F. Supp. 693 (W.D. Mo. 1992).

2 Ariz.—Earthworks Contracting, Ltd. v. Mendel-Allison Const. of California, Inc., 167 Ariz. 102, 804 P.2d 831 (Ct. App. Div. 1 1990).

3 Fla.—Dewberry v. Auto-Owners Ins. Co., 363 So. 2d 1077 (Fla. 1978).
Me.—Portland Sav. Bank v. Landry, 372 A.2d 573 (Me. 1977).

4 Wis.—Reserve Life Ins. Co. v. La Follette, 108 Wis. 2d 637, 323 N.W.2d 173 (Ct. App. 1982).

5 U.S.—MSA Realty Corp. v. State of Ill., 794 F. Supp. 267 (N.D. Ill. 1992), decision aff'd, 990 F.2d 288 (7th Cir. 1993).
No substantial impairment
Minn.—Midwest Sports Marketing, Inc. v. Hillerich & Bradsby of Canada, Ltd., 552 N.W.2d 254 (Minn. Ct. App. 1996).

6 U.S.—Callaway Community Hosp. v. Sullivan, 784 F. Supp. 693 (W.D. Mo. 1992).
Cal.—Walsh v. Board of Administration, 4 Cal. App. 4th 682, 6 Cal. Rptr. 2d 118 (3d Dist. 1992).

7 Or.—Eckles v. State, 306 Or. 380, 760 P.2d 846 (1988).

8 Fla.—Tri-Properties, Inc. v. Moonspinner Condominium Ass'n, Inc., 447 So. 2d 965 (Fla. 1st DCA 1984).

9 Mich.—Selk v. Detroit Plastic Products, 419 Mich. 1, 345 N.W.2d 184 (1984), opinion clarified on other grounds, 419 Mich. 32, 348 N.W.2d 652 (1984).

10 U.S.—Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).
Del.—Atlantic Richfield Co. v. Tribbitt, 399 A.2d 535 (Del. Ch. 1977).
Mich.—Michigan Transp. Co. v. Secretary of State, 41 Mich. App. 654, 201 N.W.2d 83 (1972).
Tex.—Delta County Levee Imp. Dist. No. 2 v. Leonard, 559 S.W.2d 387 (Tex. Civ. App. Texarkana 1977), writ refused n.r.e., (Mar. 29, 1978).

11 Ariz.—Phelps Dodge Corp. v. Arizona Elec. Power Co-op., Inc., 207 Ariz. 95, 83 P.3d 573 (Ct. App. Div. 1 2004), as amended on denial of reconsideration, (Mar. 15, 2004).

12 U.S.—Kaiser Development Co. v. City and County of Honolulu, 649 F. Supp. 926 (D. Haw. 1986), order aff'd, 898 F.2d 112 (9th Cir. 1990), opinion issued, 899 F.2d 18 (9th Cir. 1990), opinion amended and superseded on other grounds, 913 F.2d 573 (9th Cir. 1990).
Ariz.—Earthworks Contracting, Ltd. v. Mendel-Allison Const. of California, Inc., 167 Ariz. 102, 804 P.2d 831 (Ct. App. Div. 1 1990).

13 U.S.—Bridgeport Hydraulic Co. v. Council on Water Co. Lands of State of Conn., 453 F. Supp. 942 (D. Conn. 1977), judgment aff'd, 439 U.S. 999, 99 S. Ct. 606, 58 L. Ed. 2d 674 (1978).
N.D.—State v. Goetz, 312 N.W.2d 1 (N.D. 1981).
Coal and oil leases
Although mineral owners' right to enter into coal and oil leases after a statutory lapse of their mineral rights has been impaired by the dormant mineral interests act, that right is a property, not a contract, right; therefore, the act does not violate the Contract Clause.
U.S.—Texaco, Inc. v. Short, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982).

14 U.S.—Schenck v. City of Hudson, 997 F. Supp. 902 (N.D. Ohio 1998), aff'd, 208 F.3d 215 (6th Cir. 2000); Balawajder v. Johnson, 2004 WL 51263 (Tex. App. Houston 14th Dist. 2004).

15 Ga.—Craig v. City of Lilburn, 226 Ga. 679, 177 S.E.2d 75 (1970).

Iowa—State ex rel. Turner v. Limbrecht, 246 N.W.2d 330 (Iowa 1976) (overruled on other grounds by, State ex rel. Miller v. Hydro Mag, Ltd., 436 N.W.2d 617 (Iowa 1989)).

16 U.S.—United Healthcare Ins. Co. v. Davis, 602 F.3d 618 (5th Cir. 2010).

17 Conn.—Schieffelin & Co. v. Department of Liquor Control, 194 Conn. 165, 479 A.2d 1191 (1984).

18 U.S.—United Healthcare Ins. Co. v. Davis, 602 F.3d 618 (5th Cir. 2010); Maryland State Teachers Ass'n, Inc. v. Hughes, 594 F. Supp. 1353 (D. Md. 1984), aff'd (4th Circ.).

Conn.—Schieffelin & Co. v. Department of Liquor Control, 194 Conn. 165, 479 A.2d 1191 (1984).

19 Okla.—Seal v. Corporation Com'n, 1986 OK 34, 725 P.2d 278 (Okla. 1986).

20 Cal.—Oceanside Mobilehome Park Owners' Assn. v. City of Oceanside, 157 Cal. App. 3d 887, 204 Cal. Rptr. 239 (4th Dist. 1984).

21 U.S.—Glens Falls Ins. Co. v. Irion, 323 F. Supp. 1164 (D. Mont. 1970).

Fla.—Winn Dixie Stores, Inc. v. Schenck Co., 662 So. 2d 1021 (Fla. 5th DCA 1995).

Wash.—Tri-Financial Corp. v. Department of Revenue, 6 Wash. App. 637, 495 P.2d 690, 65 A.L.R.3d 1174 (Div. 2 1972).

Public Service Commission

The Public Service Commission's interference with a contract between a regulated utility and its nonregulated holding company was not unconstitutional; the condition on the use of assets, which the Commission sought to enforce, predated any agreements between the utility and the holding company.

Mich.—CMS Energy Corp. v. Attorney General, 190 Mich. App. 220, 475 N.W.2d 451 (1991).

22 La.—Tullier v. Tullier, 464 So. 2d 278 (La. 1985).

Impairment found

U.S.—Cloverdale Equipment Co. v. Manitowoc Engineering Co., 964 F. Supp. 1152 (E.D. Mich. 1997), judgment aff'd, 149 F.3d 1182 (6th Cir. 1998).

23 Cal.—Hall v. Butte Home Health, Inc., 60 Cal. App. 4th 308, 70 Cal. Rptr. 2d 246 (3d Dist. 1997).

N.Y.—Garal Wholesalers, Ltd. v. Miller Brewing Co., 193 Misc. 2d 630, 751 N.Y.S.2d 679 (Sup 2002).

24 U.S.—James v. Lash, 965 F. Supp. 1190 (N.D. Ind. 1997).

25 U.S.—In re McClain, 264 B.R. 230, 2001 BNH 30 (Bankr. D. N.H. 2001).

End of Document

16A C.J.S. Constitutional Law § 593

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

b. Impairment of Obligation

§ 593. Impairment of contract obligations; legitimate expectations of contracting parties

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2663, 2664, 2730, 2736, 2765

A statute does not necessarily impair a party's rights under the Contract Clause unless it adversely affects that party's reasonable expectations under the contract. The impairment of existing contracts is not unconstitutional when the parties were on notice that the field in which they were contracting was subject to close regulation and further regulation was foreseeable.

The legitimate expectations of the contracting parties must be examined to determine whether the impairment complained of is substantial as well as to determine its level of severity.[1] A statute does not necessarily impair a party's rights under the Contract Clause unless it adversely affects that party's reasonable expectations under the contract,[2] but a statute that significantly alters the contracting parties' expectations and substantially impairs contract rights violates the Contract Clause.[3]

In assessing a party's reasonable expectations under a contract, for purposes of determining whether the statute impairs the party's rights under the Contract Clause, one important factor is the degree of governmental regulation regarding the subject of

the contract.[4] Accordingly, a court ascertaining the scope of a permissible contractual impairment in the context of the contract clauses in a state or the federal constitution must consider whether the industry involved has been regulated in the past.[5] The impairment of existing contracts is not unconstitutional when the parties were on notice that the field in which they were contracting was subject to close regulation,[6] and further regulation was foreseeable.[7] For example, a finding of constitutionality is especially likely in the regulation of contracts for legal services because lawyers, as officers of the courts and fiduciaries for clients, have an ongoing obligation to charge only reasonable fees.[8]

Prior regulation of an industry as a whole does not necessarily preclude every claim that subsequent legislation unconstitutionally impairs preexisting contractual obligations.[9] A court must look to the nature as well as the act of regulation to determine whether an industry has been sufficiently regulated in the past to preempt a Contract Clause challenge.[10] The prior regulation must share more in common with the challenged legislation than merely the industry in which it operates in order to bar a subsequent finding of substantial impairment under the Contract Clause.[11]

Footnotes

1 U.S.—Maryland State Teachers Ass'n, Inc. v. Hughes, 594 F. Supp. 1353 (D. Md. 1984), aff'd (4th Circ.).
Legislative action within reasonable expectations of parties
U.S.—Alliance of Automobile Manufacturers v. Gwadosky, 304 F. Supp. 2d 104 (D. Me. 2004).

2 U.S.—Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425 (D.R.I. 1994).
No contract-based expectation that was substantially impaired by statutory amendment
N.Y.—Garal Wholesalers, Ltd. v. Miller Brewing Co., 193 Misc. 2d 630, 751 N.Y.S.2d 679 (Sup 2002).

3 U.S.—Northern Nat. Gas Co. v. Munns, 254 F. Supp. 2d 1103 (S.D. Iowa 2003).

4 U.S.—Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425 (D.R.I. 1994).

5 Mich.—Romein v. General Motors Corp., 436 Mich. 515, 462 N.W.2d 555 (1990), aff'd, 503 U.S. 181, 112 S. Ct. 1105, 117 L. Ed. 2d 328 (1992).
Minn.—Jacobsen v. Anheuser-Busch, Inc., 392 N.W.2d 868 (Minn. 1986).
W. Va.—Shell v. Metropolitan Life Ins. Co., 181 W. Va. 16, 380 S.E.2d 183 (1989).
Critical factor
U.S.—Blue Cross of Iowa v. Foudree, 606 F. Supp. 1574 (S.D. Iowa 1985).
Subject to further legislation
For purposes of a Contract Clause analysis, if a person buys into an enterprise already regulated in the particular to which the person now objects, the person buys subject to further legislation upon the same topic.
N.Y.—Garal Wholesalers, Ltd. v. Miller Brewing Co., 193 Misc. 2d 630, 751 N.Y.S.2d 679 (Sup 2002).

6 U.S.—Houlton Citizens' Coalition v. Town of Houlton, 175 F.3d 178 (1st Cir. 1999).
W. Va.—Hicks v. Wilson, 182 W. Va. 660, 391 S.E.2d 350 (1990).
No substantial impairment in light of knowledge of regulation
Haw.—Applications of Herrick, 82 Haw. 329, 922 P.2d 942 (1996).

7 U.S.—National Ass'n of Fundraising Ticket Mfrs. v. Humphrey, 753 F. Supp. 1465 (D. Minn. 1990).
S.C.—Mibbs, Inc. v. South Carolina Dept. of Revenue, 337 S.C. 601, 524 S.E.2d 626 (1999).
Civil action against brewer
The retroactive application of an amendment to a New York statute, providing that a beer wholesaler could maintain a civil action against a brewer in a court of competent jurisdiction in New York, did not substantially impair the reasonable expectations of a brewer who wanted to terminate an agreement with its distributor or impose unreasonable consequences sufficient to constitute a violation of the Contract Clause of United States Constitution; the agreement provided it was subject to alteration by state law, the contract related to an area that was historically heavily regulated, and the brewer should have anticipated legislative alterations.
U.S.—Coors Brewing Co. v. Oak Beverage, Inc., 549 F. Supp. 2d 764 (E.D. Va. 2008).

8 W. Va.—Hicks v. Wilson, 182 W. Va. 660, 391 S.E.2d 350 (1990).

9 W. Va.—Shell v. Metropolitan Life Ins. Co., 181 W. Va. 16, 380 S.E.2d 183 (1989).

10 U.S.—Ross v. City of Berkeley, 655 F. Supp. 820 (N.D. Cal. 1987).

11 U.S.—Ross v. City of Berkeley, 655 F. Supp. 820 (N.D. Cal. 1987).

Notice of specific regulation required

The retroactive application of the Iowa Franchise Act to existing hotel and food services franchises substantially impaired the parties' contractual rights in the agreements in existence at the time Act became effective; prior regulation in Iowa and other states at the time of execution and assignment of license agreements was not sufficient to put plaintiffs on notice that they would be subject to later regulation of the type contained in Act.

U.S.—McDonald's Corp. v. Nelson, 822 F. Supp. 597 (S.D. Iowa 1993), aff'd, 29 F.3d 383 (8th Cir. 1994).

End of Document

16A C.J.S. Constitutional Law § 594

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

b. Impairment of Obligation

§ 594. State justification of contract impairment

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2663, 2664, 2730, 2736, 2737

The Contract Clause does not prevent a state from exercising its police powers even though private contract might be adversely affected. However, if a law constitutes a substantial impairment, the State must have a significant and legitimate public purpose behind the law.

The Contract Clause does not prevent a state from exercising its police powers to promote the general welfare even though private contracts between individuals might be adversely affected.[1] While the language of the Contract Clause is absolute on its face, it does not trump the police power of a state to protect the general welfare of its citizens, a power which is paramount to any rights under contracts between individuals.[2] Federal and state contract clauses do not prevent state or municipal governments from exercising their police powers simply because contracts previously entered into between private parties are affected; rather, these clauses impose some limits on the legitimate exercise of that power in certain situations.[3] Thus, a state may impair private contracts by subsequent legislation or regulation so long as it is reasonably necessary to further an important public purpose and measures taken that impair the contract are reasonable and appropriate to effectuate that purpose.[4] Furthermore, the authority

of the legislature under its police powers cannot be restricted by the provisions of private contracts between individuals or between individuals and corporations.[5]

Valid existing contracts cannot be impaired by future legislation except in a proper exercise of the police power of the State.[6] The threshold inquiry, on a Contract Clause challenge, is whether a state law has, in fact, operated as a substantial impairment of a contractual relationship.[7] If the law constitutes a substantial impairment, the State must have a significant and legitimate public purpose behind the law,[8] such as remedying a broad and general social or economic problem.[9] Legislation that does invade the freedom of contract can only be sustained as a valid exercise of the police power if it both relates to the claimed objective and employs means which are both reasonable and reasonably appropriate to secure such object.[10] It has been said that the government must use the least intrusive means to achieve its goals, and it is not free to impose a drastic impairment of private contractual relationships when an evident and more moderate course would serve its purposes equally well.[11] A law is constitutional even if it impairs the obligations of private contracts if there is a significant and legitimate public purpose behind the enactment of the law although the regulation must not unreasonably intrude into the parties' bargain to a greater degree than is necessary to achieve the stated public purpose.[12] Under the Contract Clause, the severity of the impairment measures the height of the hurdle state legislation must clear.[13]

When the State acts to impair a purely private contract, the courts properly defer to legislative judgments as to the necessity and reasonableness of the particular measure,[14] but the review of legislative judgment is more exacting than the rational basis standard applied in substantive due process analysis.[15] However, if in the guise of effectuating an important public purpose, a statute is in reality drawn so restrictively as to benefit only a handful, it will not be upheld.[16] Further, the courts need not give absolute deference to a legislative determination as to necessity and reasonableness of a legislative impairment of preexisting contracts even in cases in which the State is not a party to the contracts in question.[17]

The State must exercise its police power, rather than providing a benefit to special interests,[18] and even a minimal impairment of contractual expectations violates the Contract Clause where there is no real exercise of the police power to justify the impairment.[19] Assuming a legitimate public purpose has been identified, the inquiry turns to whether the means chosen to accomplish this purpose are reasonable and appropriate,[20] or stated another way, whether the adjustments of the rights and responsibilities of the contracting parties is based on reasonable conditions and is of a character appropriate to the public purpose behind the law's adoption.[21] Unfairness does not change special interest legislation into a type that justifies contractual impairment.[22]

Footnotes

1 U.S.—In re Fairview-Takoma Ltd. Partnership, 206 B.R. 792 (Bankr. D. Md. 1997).
Ohio—Bass Energy Inc. v. Highland Hts., 193 Ohio App. 3d 725, 2010-Ohio-2102, 954 N.E.2d 130 (8th Dist. Cuyahoga County 2010).

2 U.S.—Brown v. New York, 975 F. Supp. 2d 209 (N.D. N.Y. 2013).
N.Y.—Healthnow New York Inc. v. New York State Ins. Dept., 110 A.D.3d 1216, 973 N.Y.S.2d 387 (3d Dep't 2013).
Ohio—Bass Energy Inc. v. Highland Hts., 193 Ohio App. 3d 725, 2010-Ohio-2102, 954 N.E.2d 130 (8th Dist. Cuyahoga County 2010).

3 Wis.—Metropolitan Milwaukee Ass'n of Commerce, Inc. v. City of Milwaukee, 2011 WI App 45, 332 Wis. 2d 459, 798 N.W.2d 287 (Ct. App. 2011).

4 N.Y.—Healthnow New York Inc. v. New York State Ins. Dept., 110 A.D.3d 1216, 973 N.Y.S.2d 387 (3d Dep't 2013); Schantz v. O'Sullivan, 11 A.D.3d 22, 780 N.Y.S.2d 813 (3d Dep't 2004).

Promotion of common weal or general good of public

Consistent with the Contract Clause, a state may exercise its police power for the promotion of the common weal, or for the general good of the public, though contracts previously entered into between individuals may thereby be affected.

U.S.—Rhode Island Hospitality Ass'n v. City of Providence ex rel. Lombardi, 775 F. Supp. 2d 416 (D.R.I. 2011), aff'd, 667 F.3d 17 (1st Cir. 2011).

Private contracts not subject to unlimited modification

Private contracts are not subject to unlimited modification under the police power; instead, to be valid under the Contract Clause, laws intended to regulate existing contractual relationships must serve a legitimate public purpose.

U.S.—American Federation of State, County and Municipal Employees v. City of Benton, Arkansas, 513 F.3d 874 (8th Cir. 2008).

Less scrutiny

The final inquiry in the analysis of whether a regulation violates the Contract Clause concerns whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption; where a state is not a party to the contract, a court employs less scrutiny in addressing the third inquiry.

U.S.—Cycle City, Ltd. v. Harley-Davidson Motor Co., Inc., 2014 WL 7714890 (D. Haw. 2014).

5 Wyo.—Newport Intern. University, Inc. v. State, Dept. of Educ., 2008 WY 72, 186 P.3d 382, 233 Ed. Law Rep. 944 (Wyo. 2008).

6 U.S.—Faitoute Iron & Steel Co. v. City of Asbury Park, N.J., 316 U.S. 502, 62 S. Ct. 1129, 86 L. Ed. 1629 (1942); Medical Soc. of New Jersey v. Mottola, 320 F. Supp. 2d 254 (D.N.J. 2004).

Ind.—Clem v. Christole, Inc., 582 N.E.2d 780 (Ind. 1991).

As to the exercise of police power as a power of states, generally, see § 515.

Reasonable and appropriate exercise of police power

Mass.—Arthur D. Little, Inc. v. Commissioner of Health and Hospitals of Cambridge, 395 Mass. 535, 481 N.E.2d 441 (1985).

N.Y.—Hasenoehrl Leasing, Inc. v. Town of Hamburg, 182 A.D.2d 1091, 583 N.Y.S.2d 79 (4th Dep't 1992).

Reducing land ownership concentration

State land reform act, which created land condemnation scheme whereby title in real property is taken from lessors and transferred to lessees in order to reduce the concentration of land ownership, does not violate the Contract Clause of the Constitution.

U.S.—Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S. Ct. 2321, 81 L. Ed. 2d 186 (1984).

7 U.S.—Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).

Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).

8 U.S.—Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).

Legitimate purpose shown

U.S.—Houlton Citizens' Coalition v. Town of Houlton, 175 F.3d 178 (1st Cir. 1999); Sanitation and Recycling Industry, Inc. v. City of New York, 107 F.3d 985 (2d Cir. 1997).

Orderly administration of judicial system

While prohibiting assignment of legal malpractice claims limits the ability of a person to contract, such limitation does not violate the contract provision of either the United States or Texas Constitution as the prohibition is necessary for the orderly administration of the judicial system.

Tex.—Vinson & Elkins v. Moran, 946 S.W.2d 381 (Tex. App. Houston 14th Dist. 1997), writ dismissed by agreement, (Mar. 26, 1998).

9 Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).

10 Ind.—Clem v. Christole, Inc., 582 N.E.2d 780 (Ind. 1991).

Statute outlawing cockfighting a legitimate and reasonable exercise of the police power

Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).

Impairment rationally related to legitimate interest

U.S.—Bricklayers Union Local 21 v. Edgar, 922 F. Supp. 100, 109 Ed. Law Rep. 148 (N.D. Ill. 1996).

11 Cal.—Interstate Marina Development Co. v. County of Los Angeles, 155 Cal. App. 3d 435, 202 Cal. Rptr. 377 (2d Dist. 1984).

12 Fla.—Southwest Florida Water Management Dist. v. Charlotte County, 774 So. 2d 903 (Fla. 2d DCA 2001).

Statute not justified by significant and legitimate purpose

U.S.—Northern Nat. Gas Co. v. Munns, 254 F. Supp. 2d 1103 (S.D. Iowa 2003).

Lack of significant and legitimate public purpose for retroactive application of statute

U.S.—Rolec, Inc. v. Finlay Hydrascreen USA, Inc., 917 F. Supp. 67 (D. Me. 1996).

13 U.S.—National Collegiate Athletic Ass'n v. Miller, 795 F. Supp. 1476, 76 Ed. Law Rep. 1060 (D. Nev. 1992), aff'd, 10 F.3d 633, 87 Ed. Law Rep. 412 (9th Cir. 1993).

14 U.S.—Buffalo Teachers Federation v. Tobe, 464 F.3d 362, 213 Ed. Law Rep. 83 (2d Cir. 2006); American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff, 669 F.3d 359 (3d Cir. 2012); Welch v. Brown, 935 F. Supp. 2d 875 (E.D. Mich. 2013), stay pending appeal denied, 2013 WL 3224416 (E.D. Mich. 2013) and order aff'd, 551 Fed. Appx. 804 (6th Cir. 2014); Universal Ins. Co. v. Department of Justice, 866 F. Supp. 2d 49 (D.P.R. 2012), on reconsideration in part, (June 22, 2012).

Kan.—Zimmerman v. Board of County Com'rs, 289 Kan. 926, 218 P.3d 400 (2009), subsequent determination, 293 Kan. 332, 264 P.3d 989 (2011).

N.Y.—Schantz v. O'Sullivan, 11 A.D.3d 22, 780 N.Y.S.2d 813 (3d Dep't 2004).

S.C.—Ken Moorhead Oil Co., Inc. v. Federated Mut. Ins. Co., 323 S.C. 532, 476 S.E.2d 481 (1996).

Economic and social regulation

Where state law impacts private contracts and involves economic and social regulation, courts properly defer to legislative judgment as to necessity and reasonableness of particular measure.

U.S.—In re Fairview-Takoma Ltd. Partnership, 206 B.R. 792 (Bankr. D. Md. 1997).

Some deference

When a private contract is impaired by statute, some deference to the legislature is warranted.

Wash.—Washington Educ. Ass'n v. Washington Dept. of Retirement Systems, 181 Wash. 2d 233, 332 P.3d 439 (2014).

15 U.S.—American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff, 669 F.3d 359 (3d Cir. 2012).

16 N.Y.—Schantz v. O'Sullivan, 11 A.D.3d 22, 780 N.Y.S.2d 813 (3d Dep't 2004).

Statute too narrow

Nevada statutes setting forth the procedure for an intercollegiate athletic organization to follow in conducting an investigation of college athletic infractions and in holding an official hearing unconstitutionally impaired a contractual relationship between the organization and its Nevada member institutions; the organization could not comply with certain procedures mandated by statutes in carrying out its investigations of alleged violations, and while statutes represented a legitimate exercise of police power, their singular narrow purpose did not elevate them to the level of state laws necessary to protect the health and safety of the people.

U.S.—National Collegiate Athletic Ass'n v. Miller, 795 F. Supp. 1476, 76 Ed. Law Rep. 1060 (D. Nev. 1992), aff'd, 10 F.3d 633, 87 Ed. Law Rep. 412 (9th Cir. 1993).

17 U.S.—In re Garrison, 108 B.R. 760 (Bankr. N.D. Okla. 1989).

18 U.S.—Cranley v. National Life Ins. Co. of Vermont, 144 F. Supp. 2d 291 (D. Vt. 2001), judgment aff'd, 318 F.3d 105 (2d Cir. 2003).

Necessary police power

Only those statutes which are necessary for the general public and reasonable under the circumstances will constitute a valid exercise of police power of the State within an exception to the state's contract clause; it is only necessary police power, rather than general police power, which provides the exception.

Ind.—Clem v. Christole, Inc., 582 N.E.2d 780 (Ind. 1991).

19 Wash.—Birkenwald Distributing Co. v. Heublein, Inc., 55 Wash. App. 1, 776 P.2d 721 (Div. 1 1989).

20 U.S.—Cranley v. National Life Ins. Co. of Vermont, 144 F. Supp. 2d 291 (D. Vt. 2001), judgment aff'd, 318 F.3d 105 (2d Cir. 2003).

21 Okla.—Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605 (Okla. 2004), as corrected, (July 28, 2004).

22 Wash.—Birkenwald Distributing Co. v. Heublein, Inc., 55 Wash. App. 1, 776 P.2d 721 (Div. 1 1989).

End of Document

16A C.J.S. Constitutional Law § 595

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

b. Impairment of Obligation

§ 595. Law annulling valid contract as impairing obligation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2739, 2747

A law enacted subsequent to a valid contract, which has the effect of annulling the contract, constitutes an impairment of the contract.

A law enacted subsequent to a contract which, if valid, will have the effect of annulling the contract constitutes legislative impairment of the contract, and is clearly unconstitutional,[1] and does not render an antedating contract invalid,[2] unless the statute affecting the contract was enacted through a valid exercise of the State's police power.[3]

A statute enacted in the exercise of the police power is not invalid where it only incidentally affects the existing contract.[4] Furthermore, such a statute which provides that a contract declared to be against public policy is voidable at the option of a specified party thereto does not impair the obligation of contracts.[5] In any event, a statute prohibiting subsequent contracts in certain respects does not impair the obligation of contracts.[6]

Footnotes

1 U.S.—Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413, 88 A.L.R. 1481 (1934).

Restrictive covenants

A statute providing that restrictive covenants prohibiting locating group homes for developmentally disabled and mentally retarded in a single family residential subdivisions are void as against public policy violated the contract clause of the state constitution.

Ind.—Minder v. Martin Luther Home Foundation, 582 N.E.2d 788 (Ind. 1991).

Surviving joint tenants' contractual rights not discharged

Any contractual obligation a Medicaid recipient had to surviving joint tenants to transfer her interest in the real estate in fee simple without encumbrance was not discharged by a Medicaid recovery statute that permitted the State to recover Medicaid benefits paid to a recipient from jointly held property in the recipient's estate, which would be an unconstitutional impairment of the surviving joint tenants' contractual rights, but merely made such obligation impossible to perform, which gave the surviving joint tenants only a breach of contract claim against the estate.

Iowa—In re Estate of Serovy, 711 N.W.2d 290 (Iowa 2006).

2 N.Y.—Doyle v. Gleason, 152 Misc. 641, 274 N.Y.S. 183 (Sup 1934), aff'd, 244 A.D. 52, 278 N.Y.S. 802 (4th Dep't 1935).

3 Tex.—State/Operating Contractors ABS Emissions, Inc. v. Operating Contractors/State, 985 S.W.2d 646 (Tex. App. Austin 1999).

4 Mich.—Brda v. Chrysler Corp., 50 Mich. App. 332, 213 N.W.2d 295 (1973).

5 **Pyramid promotional schemes**

Nev.—Koscot Interplanetary, Inc. v. Draney, 90 Nev. 450, 530 P.2d 108 (1974).

6 Minn.—Pye v. Grunert, 201 Minn. 191, 275 N.W. 615 (1937).

Indemnification clause

Although a statute precluding clauses exempting an owner or operator of a recreational facility of liability for negligent acts was passed subsequent to a recreational club's "hold harmless" by-law, the application of the statute did not improperly impinge on vested contractual rights as the inclusion of an indemnification clause of necessity carried with it the assent by a member to the terms of clause as one of the conditions of membership, each year, when the member remitted membership dues for the next ensuing year.

N.Y.—Blanc v. Windham Mountain Club, Inc., 115 Misc. 2d 404, 454 N.Y.S.2d 383 (Sup 1982), order aff'd, 92 A.D.2d 529, 459 N.Y.S.2d 447 (1st Dep't 1983).

16A C.J.S. Constitutional Law § 596

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

b. Impairment of Obligation

§ 596. Law materially altering contract as impairing obligation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2736, 2737

Legislation which attempts to make material alterations in the character, terms, or legal effect of an existing contract impairs the obligation of the contract.

Legislation which attempts to make material alterations in the character, terms, or legal effect of existing contracts is clearly void.[1] Of this character are statutes which attempt to add a material condition or provision to a contract[2] and those which attempt to release stipulations contained therein.[3] Other material alterations which impair the obligation of contracts are those which attempt to alter the extent of the liability on a contract[4] or a material impairment of the means of enforcement of the rights under a contract.[5] However, a statute is not void merely because it renders the performance of a contract more difficult or less profitable.[6]

There can be no impairment of a contract by a change thereof if the change is effected with the consent of the contracting party affected thereby.[7]

Footnotes

1 Ga.—Hutchinson v. Brown, 47 Ga. App. 82, 169 S.E. 848 (1933).
N.Y.—Railroad Co-op. Bldg. & Loan Ass'n v. Boston Bldg. Estates, 149 Misc. 349, 267 N.Y.S. 204 (Sup 1933).
S.C.—Henry v. Alexander, 186 S.C. 17, 194 S.E. 649 (1937).
Change of intention and legal effect
Any law which changes the original intent of the parties by imposing conditions not expressed in the original contract impairs the contractual obligation.
Pa.—Helicon Corp. v. Borough of Brownsville, 68 Pa. Commw. 375, 449 A.2d 118 (1982).

2 Fla.—Rebholz v. Metrocare, Inc., 397 So. 2d 677 (Fla. 1981).
N.Y.—Bon-Air Estates, Inc. v. Building Inspector of Town of Ramapo, 31 A.D.2d 502, 298 N.Y.S.2d 763 (2d Dep't 1969).

3 Md.—Ghingher v. Pearson, 165 Md. 273, 168 A. 105 (1933).
N.J.—Klorman v. Westcliff Co., 12 N.J. Misc. 266, 170 A. 251 (Sup. Ct. 1934).
S.C.—Federal Land Bank of Columbia v. Garrison, 185 S.C. 255, 193 S.E. 308 (1937).

4 Ala.—Harris v. National Truck Service, 56 Ala. App. 350, 321 So. 2d 690 (Civ. App. 1975).

5 U.S.—Matter of Pettit, 55 B.R. 394 (Bankr. S.D. Iowa 1985), order aff'd, 57 B.R. 362 (S.D. Iowa 1985).

6 U.S.—Knoxville Water Co. v. City of Knoxville, 200 U.S. 22, 26 S. Ct. 224, 50 L. Ed. 353 (1906).
N.Y.—Krantz v. Town of Amherst, 192 Misc. 912, 80 N.Y.S.2d 812 (Sup 1948).
Relative position of parties
The Contract Clause of the Federal Constitution does not bar all governmental action affecting the profitability of private contracts but, rather, forbids an alteration in the relative position of two parties to an existing contract.
U.S.—South Terminal Corp. v. E.P.A., 504 F.2d 646, 30 A.L.R. Fed. 109 (1st Cir. 1974).

7 Cal.—Mulcahy v. Baldwin, 216 Cal. 517, 15 P.2d 738 (1932).

End of Document

16A C.J.S. Constitutional Law § 597

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

b. Impairment of Obligation

§ 597. Statute imposing added conditions or duties as impairing obligation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2736

A statute imposing added conditions or duties on parties to a contract is void only if it produces a change in the obligations or substantial rights of a party.

A statute imposing additional conditions or duties on individuals with regard to their contracts which amount to a change in the obligations, or in the substantial rights of a party, is void.[1] However, an obligation cannot be said to be impaired by a statute which merely imposes an additional duty on a person in order that the person may preserve it[2] or which imposes subsequent conditions, in the public interest, under the police power.[3] Moreover, the Contract Clause is not violated by an ordinance which imposes additional obligations outside of the contract between the parties and does not interfere with the basic duties under the contract.[4]

A statute, therefore, which requires that within a reasonable time after its passage existing contracts must be filed or recorded or otherwise notified to the public in order to preserve all the rights of the parties is not unconstitutional,[5] and the same rule

is applicable to a statute which, while reducing the time allowed, still allows a reasonable time within which to give a notice as a condition precedent to the enforcement of contract rights.[6]

Footnotes

1 Ariz.—Ward v. Chevron U. S. A. Inc., 123 Ariz. 208, 598 P.2d 1027 (Ct. App. Div. 2 1979).
Del.—Atlantic Richfield Co. v. Tribbitt, 399 A.2d 535 (Del. Ch. 1977).
N.Y.—Capelle v. Makowski, 93 Misc. 2d 436, 402 N.Y.S.2d 904 (Sup 1977), judgment aff'd, 62 A.D.2d 1167, 404 N.Y.S.2d 473 (4th Dep't 1978).
Increase of duties
The Contract Clause does not forbid only state laws that diminish the duties of a contractual obligor and not laws that increase them.
U.S.—Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed. 2d 727 (1978).

2 Fla.—Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774 (Fla. 1979).

3 Wis.—State ex rel. Bldg. Owners & Managers Ass'n of Milwaukee, Inc. v. Adamany, 64 Wis. 2d 280, 219 N.W.2d 274 (1974).
Certification requirement
A statute requiring solid waste transfer stations to obtain a certificate of public convenience and necessity did not violate the Contract Clause as applied to a facility whose impaired contracts were illegal; even if legal contracts were impaired, the certification requirement was a reasonable condition sufficiently related to an appropriate governmental interest.
N.J.—Matter of Recycling & Salvage Corp., 246 N.J. Super. 79, 586 A.2d 1300 (App. Div. 1991).

4 **Occupancy tax**
N.Y.—Capelle v. Makowski, 93 Misc. 2d 436, 402 N.Y.S.2d 904 (Sup 1977), judgment aff'd, 62 A.D.2d 1167, 404 N.Y.S.2d 473 (4th Dep't 1978).

5 Fla.—Mahood v. Bessemer Properties, 154 Fla. 710, 18 So. 2d 775, 153 A.L.R. 1199 (1944).
Kan.—Henley v. Myers, 76 Kan. 723, 93 P. 168 (1907), aff'd, 215 U.S. 373, 30 S. Ct. 148, 54 L. Ed. 240 (1910).
Recording of dormant mineral interests; abandonment
U.S.—Texaco, Inc. v. Short, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982).
Mich.—Van Slooten v. Larsen, 410 Mich. 21, 299 N.W.2d 704, 16 A.L.R.4th 1005 (1980).
Possibility of reverter; right of entry
Ky.—Cline v. Johnson County Bd. of Ed., 548 S.W.2d 507, 87 A.L.R.3d 1007 (Ky. 1977).

6 Ga.—Candler v. Mobley, 37 Ga. App. 259, 139 S.E. 732 (1927).
Minn.—State v. Krahmer, 105 Minn. 422, 117 N.W. 780 (1908).

16A C.J.S. Constitutional Law § 598

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

b. Impairment of Obligation

§ 598. Protection of contractual obligations as to payment of interest

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2761

A contract containing a promise for the payment of interest is within the protection of the constitution, and any statute which attempts to remit or change a rate of interest is void. Usury statutes, however, are directed at contracts which are illegal and contrary to public policy and hence are not void for impairment of obligations.

Where a contract contains an express promise for the payment of interest, or such an agreement is properly to be implied on the principle that the law then in force as to interest is incorporated into the contract, the obligation as to interest is within the protection of the Federal Constitution,[1] and any subsequent statute which attempts to remit such interest,[2] or, directly or indirectly, to prevent collection thereof,[3] or to change the rate at which it must be computed,[4] is void. Written obligations for money which contain their own interest rates are obligations of contracts, and it is constitutionally beyond the general power of the government to mandate a particular rate of interest for them or for judgments derived from them.[5]

However, a statute which prohibits the payment of more than a certain interest, which is less than that which securities bear, does not impair the obligation of contracts where the subject of the statute is within the regulatory power of the State.[6]

Interest as damages.

Interest allowed, not as a matter of contract but as damages for the breach of a contract, is not within the protection of the constitution, and the rate is accordingly subject to change by a statute passed after it begins to run.[7]

Interest on judgment.

The obligation to pay interest on a judgment includes interest on an amount awarded for breach thereof,[8] and the retroactivity of a statute allowing interest on damages for breach of contract does not invalidate the statute as a violation of constitutional guaranties.[9] Accordingly, a statute changing the rate of interest may be made to apply to judgments previously obtained and to regulate the rate of interest on them from the time the statute takes effect.[10]

Usury acts.

Since constitutional provisions which prohibit states from impairing the obligation of contracts are applicable only to contracts lawfully made, usury statutes are directed at contracts which are illegal and contrary to public policy and hence are not void for impairment of the obligation.[11] In this regard, usury statutes do not affect the obligation of contracts but pertain to the remedy only by giving the debtor the privilege of avoiding his or her contract when usurious.[12]

Under a constitutional provision construed to repeal a borrower's right to recover usurious interest, the obligation of contract is not impaired since the defense of usury is in the nature of a statutory penalty.[13] It has been held that parties to contracts executed when there were no usury statutes have accrued rights which cannot be impaired or taken away by the subsequent enactment of usury statutes.[14]

A retrospective repeal of usury laws neither impairs the elements of a contract nor deprives the parties to the contract of vested rights.[15]

Footnotes

1 Ga.—Cook v. Securities Inv. Co., 184 Ga. 544, 192 S.E. 179 (1937).
Tex.—Frank v. State Bank & Trust Co., 263 S.W. 255 (Tex. Comm'n App. 1924), on reh'g, 10 S.W.2d 704 (Tex. Comm'n App. 1928).

2 Tex.—Frank v. State Bank & Trust Co., 263 S.W. 255 (Tex. Comm'n App. 1924), on reh'g, 10 S.W.2d 704 (Tex. Comm'n App. 1928).

3 Fla.—Morton v. Zuckerman-Vernon Corp., 290 So. 2d 141 (Fla. 3d DCA 1974).

4 Ala.—De Moville v. Merchants & Farmers Bank of Greene County, 237 Ala. 347, 186 So. 704 (1939).
Tex.—Frank v. State Bank & Trust Co., 263 S.W. 255 (Tex. Comm'n App. 1924), on reh'g, 10 S.W.2d 704 (Tex. Comm'n App. 1928).

5 Ky.—Union Trust, Inc. v. Brown, 757 S.W.2d 218 (Ky. Ct. App. 1988).

6 U.S.—Paul v. Craemer, 24 F. Supp. 353 (S.D. Cal. 1938).
Cal.—State Bonded Audit Bureau v. Pomona Mut. Bldg. & Loan Ass'n, 37 Cal. App. 2d Supp. 765, 98 P.2d 829 (App. Dep't Super. Ct. 1940).

7 N.Y.—Jamaica Sav. Bank v. Toomey, 77 Misc. 2d 887, 355 N.Y.S.2d 268 (Sup 1974), order aff'd, 46 A.D.2d 847, 363 N.Y.S.2d 313 (2d Dep't 1974).

8 N.Y.—J. B. Preston Co. v. Funkhouser, 261 N.Y. 140, 184 N.E. 737, 87 A.L.R. 459 (1933), judgment aff'd, 290 U.S. 163, 54 S. Ct. 134, 78 L. Ed. 243 (1933).

9 U.S.—J. B. Preston Co. v. Funkhouser, 261 N.Y. 140, 184 N.E. 737, 87 A.L.R. 459 (1933), judgment aff'd, 290 U.S. 163, 54 S. Ct. 134, 78 L. Ed. 243 (1933).

10 N.D.—Swanson v. Flynn, 75 N.D. 597, 31 N.W.2d 320 (1948).

11 Ark.—Public Loan Corp. of Fayetteville v. Peterson, 224 Ark. 22, 271 S.W.2d 353 (1954).
Ohio—Dunn v. State, 122 Ohio St. 431, 8 Ohio L. Abs. 387, 172 N.E. 148 (1930).
W. Va.—Cash Service Co. v. Ward, 118 W. Va. 703, 192 S.E. 344 (1937).

12 U.S.—Petterson v. Berry, 125 F. 902, 2 Alaska Fed. 212 (C.C.A. 9th Cir. 1903).

13 Cal.—Fenton v. Markwell & Co., 11 Cal. App. 2d Supp. 755, 52 P.2d 297 (App. Dep't Super. Ct. 1935).

14 Fla.—Yaffee v. International Co., 80 So. 2d 910 (Fla. 1955).

15 S.C.—Vaughan v. Kalyvas, 288 S.C. 358, 342 S.E.2d 617 (Ct. App. 1986).

End of Document

16A C.J.S. Constitutional Law § 599

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART II. Vested Rights and Retroactive Legislation

VI. Obligations of Contracts

C. Protection of Contracts of Individuals and Private Corporations from Impairment

1. In General

b. Impairment of Obligation

§ 599. Time, place, and method of performance; payment

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 2663, 2664, 2730, 2736

Statutes which alter the time of performance of a contract or the amount or medium of payment agreed to in a preexisting contract are void.

Statutes are void which alter the time for payment of an existing obligation[1] or which hasten[2] or extend[3] the time for the performance of material conditions or stipulations therein.

A state may not authorize the discharge of an existing contract by the payment of a less amount than is due.[4] However, in foreclosure, the establishment by the court of a minimum price at which lands may be offered for sale does not impair the obligation of a contract.[5] Any change in the mode of payment, or in the amount received, of child support payments brought about by a statutory reimbursement charge for money collection services furnished by a public agency is not such an unreasonable interference with the rights of the parties as to constitute an unlawful impairment of the right to contract.[6]

Neither the legislature nor the courts may provide for payment in a different medium from that which the parties to an antecedent contract have expressly designated since such action would constitute an impairment of obligation.[7]

Footnotes

1 Cal.—Shouse v. Quinley, 3 Cal. 2d 357, 45 P.2d 701 (1935).
S.C.—Federal Land Bank of Columbia v. Garrison, 185 S.C. 255, 193 S.E. 308 (1937).

2 Conn.—O'Connor v. Hartford Acc. & Indem. Co., 97 Conn. 8, 115 A. 484 (1921).

3 Mo.—Hubbard v. Hubbard, 264 S.W. 422 (Mo. Ct. App. 1924).
N.J.—Klorman v. Westcliff Co., 12 N.J. Misc. 266, 170 A. 251 (Sup. Ct. 1934).

4 N.Y.—In re Nunno's Estate, 161 Misc. 707, 293 N.Y.S. 827 (Sur. Ct. 1937).

5 Ark.—Wilson v. Fouke, 188 Ark. 811, 67 S.W.2d 1030 (1934).
Ill.—Levy v. Broadway-Carmen Bldg. Corp., 366 Ill. 279, 8 N.E.2d 671 (1937).
As to the alteration of the details of the remedies for enforcing the rights of mortgagees, see § 630.

6 N.H.—Niemiec v. King, 109 N.H. 586, 258 A.2d 356 (1969).

7 Pa.—Beaver County Bldg. & Loan Ass'n v. Winowich, 323 Pa. 483, 187 A. 481 (1936).
Tex.—Stone v. Watt, 81 S.W.2d 552 (Tex. Civ. App. Eastland 1935), writ refused.

End of Document